



BOARD OF INQUIRY (*Human Rights Code*)

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IN THE MATTER OF the Ontario *Human Rights Code*, R.S.O. 1990, c.H.19, as amended;

AND IN THE MATTER OF the complaint by Khalatun Khalil (formerly Majumder) dated July 13, 1987, alleging harassment and discrimination in employment on the basis of race, colour, sex, ancestry, place of origin and ethnic origin and, alleging sexual solicitation and reprisal by the Ontario College of Art, Jan Van Kampen and Norman Hathaway.

B E T W E E N :

Ontario Human Rights Commission

- and -

Khalatun Khalil

Complainant

- and -

Ontario College of Art,
Jan Van Kampen and Norman Hathaway

Respondents

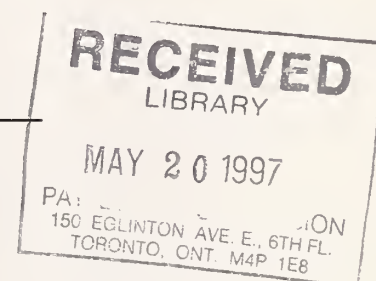
DECISION

Adjudicator : Loretta Mikus

Date : 15 May, 1997

Board File No: BI-0036-93

Decision No : 97-011



Board of Inquiry (*Human Rights Code*)
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APPEARANCES

Ontario Human Rights Commission)	Anthony Griffin, Counsel
)	
)	

Khalatun Khalil, Complainant)	On her own behalf
)	
)	

Ontario College of Art,)	Lois Robert, Counsel
Corporate Respondent)	
)	

Jan Van Kampen, Personal Respondent)	Lois Robert, Counsel
Norman Hathaway, Personal Respondent)	
)	

The Complainant, Ms. Khalatun Khalil, (formerly Khalatun Majumder) filed a complaint, dated July 13, 1987 against the Respondents Ontario College of Art, Mr. Jan Van Kampen and Mr. Norman Hathaway alleging that they were in violation of Sections 4(1), 4(2), 6(2), 6(3), and 8 of the *Human Rights Code*, S.O. 1981. In that complaint she alleged that her right to equal treatment with respect to employment and freedom from harassment in the work place had been infringed because of her race, colour, sex, ancestry, place of origin and ethnic origin. As well she claimed that her right to freedom from sexual solicitation and reprisal for the rejection of the alleged sexual solicitation had been infringed.

At the commencement of the hearing, on March 10, 1994, counsel for the Respondents moved that the complaint be dismissed on the grounds of abuse of process, bias on the part of the investigating officer and delay.

The grounds for the motion to dismiss the complaint originally included a motion to compel disclosure on the part of the Commission. I was advised during the hearing that the Commission had made the requested disclosure, but that the Respondents intended to comment on the timing of that disclosure later in their submissions.

HISTORY OF THE COMPLAINT

Chronologically, the history of the complaint is important in considering this motion of the Respondents, particularly insofar as it relates to the issue of delay. This chronology is based on the documents and affidavit evidence presented in support of the motion and are not findings of fact on the merits of the complaint.

As stated previously, the complaint was filed on July 13, 1987. On November 24, 1987, Mr. Ashworth Williams, an investigating officer with the Human Rights Commission, advised the parties that there would be a fact finding conference on December 7, 1987. On January 18, 1988, Mr. Williams advised the parties that further investigation would be required. That investigation began in March of 1988 and continued to the beginning of 1989. On February 4, 1989, a conciliation meeting was held between the parties. At that meeting Mr. Williams presented his draft report to the Respondents and his final report was dated July 7, 1989. The Respondents' reply to that report was dated September 22, 1989. Mr. Williams responded to that shortly thereafter.

During that period of time there was an ongoing dispute between the parties concerning the disclosure of Mr. Williams' notes. On May 20, 1988, the Respondents formally requested that Mr. Williams provide them with copies of all the notes of the witnesses he had interviewed. On June 8, 1988, Mr. Williams advised the Respondents that he had discussed the matter with his manager and was advised that it was not the Commission's policy to provide Respondents with an officer's notes. On February 27, 1989, a formal request for access to the record pursuant to the *Freedom of Information and Protection of Privacy Act, 1987* was filed by the Respondents. On June 13, 1990, the Assistant Commissioner of the Information and Privacy Commission advised the Respondents that the requirements for exemption under the *Freedom of Information Act* had been satisfied and that the Commission was not required to provide a copy of the investigating officer's notes.

On January 8, 1992, the Commission advised the Respondents that it intended to request the appointment of a Board of Inquiry to initiate an inquiry into the complaint. On April 3, 1992, the Minister of Citizenship advised the Respondents that Ms. Constance Backhouse and Ms. Maryka Omatsu had been appointed to convene a hearing. The parties participated in a conference call wherein it was agreed that the hearing would commence on August 17, 1992.

In June of 1992, the Respondents filed an application to quash the appointment of the Board and to quash the decision of the Commission to ask the Minister to appoint a Board. That motion was heard on July 13, 1992 before Mr. Justice Somers. At the same time the Commission brought a motion to quash the Respondents' application. The Commission's motion to quash was dismissed and Somers, J. stayed the hearing of the complaint scheduled to commence on August 17, 1992. The Commission was granted an adjournment of the Respondents' application in order to file material and conduct cross-examinations. As a result, the application was adjourned and set down to be heard before a full panel of the Divisional Court.

By Notice of Motion, dated July 17, 1992, the Commission sought leave to appeal the decision of Somers, J. to deny its application. That motion was filed on September 18, 1992, and was denied on the same day. Ms. Roberts, counsel for the Respondents, advised Commission counsel that she had obtained a full day appointment for the hearing of the Respondents' application on December 8, 1992. The Commission delivered its responding affidavit material on November 6, 1992 and on November 27, 1992 the cross-examinations of Mary Beth Currie, Michael Harnes and Ashworth Williams

began. On that date, counsel for the Ministry of the Attorney General advised the parties that it intended to file a motion to quash the Respondents' application. On December 8, 1992, the Respondents brought forth their application to dismiss and the Attorney General's office raised its motion to quash the application. The Attorney General's motion to quash was granted.

On January 7, 1993, the parties participated in a conference call with Ms. Backhouse and agreed that the hearing would commence on August 16, 1993. During that time Ms. Roberts was on a maternity leave. She returned to work on July 13, 1993. By letter dated July 30, 1993, Ms. Roberts wrote to the Registrar of the Board of Inquiry advising him that the Respondents intended to bring a motion at the commencement of the hearing to dismiss the complaint, or, in the alternative, to have Ms. Backhouse step aside as chair. By letter dated August 5, 1993, the Respondents were advised that Ms. Backhouse had resigned her appointment as chair. By letter dated September 2, 1993, Respondents' counsel wrote to the Commission asking that it not request the Minister to appoint another Board of Inquiry. By letter dated November 2, 1993, the Commission advised the Respondents that it had forwarded the complaint to the Ministry of Citizenship with a request to appoint another Board of Inquiry. By letter dated November 19, 1993, the Respondents were advised that I had been appointed as chair of this Board of Inquiry and, on December 9, 1993, a conference call was held between the parties during which it was agreed that the hearing would commence on August 8, 1994. That date was chosen to accommodate Commission counsel, Mr. Griffin, who advised the parties that he was not available for more than one or two days at a time until August and it was agreed that it would be more efficient to set aside a series of continuous hearing dates in order to expedite the matter.

BIAS - THE RESPONDENTS' POSITION

The Respondents took the position that the appointment of this Board should be quashed on the grounds that there has been a breach of the duty of fairness. Counsel for the Respondents argued that it could be characterized as a breach of the principles of natural justice or an abuse of process. She took the position that breach was of significant magnitude to seriously impair the Respondents' right to a fair hearing. The basis of the motion was that the investigating officer, Mr. Ashworth Williams, was biased and that he tailored his report to ensure that the position of the Complainant would be preferred over that of the Respondents. Respondents' counsel based her argument on the investigation, beginning with the comments made by Mr. Williams at the commencement of his

investigation. As a result, she argued, the information the Commission had before it when it made its decision to ask the Minister of Citizenship to appoint a Board of Inquiry was tainted. For that reason the hearing should not proceed.

The Respondents claimed that Mr. Williams made up his mind early in the proceedings and gathered only the information necessary to prove the complaint. The Human Rights Commission relied on his findings in deciding to request of a Board of Inquiry. The Respondents referred the Board to the affidavit of Mr. Arturo Nagel who, at the time of the investigation, was the chair of the Liberal Arts Department, and Ms. Mary Beth Currie, who was acting as counsel for the Respondents at the time. In those affidavits they stated that Mr. Williams' opening comment was "that the Commission existed to serve the public interest to protect us from the Jan Van Kampen's of the world." Throughout Mr. Williams' investigation, his bias became evident in the differential treatment that was afforded "the management of the college." For example, Mr. Williams provided non-management witnesses with copies of his notes, but refused to do so for the people he defined as "management" witnesses. When Mr. Williams was asked about the identity of the people whom he intended to interview so that the College could make arrangements for them to be available, Mr. Williams said "if the College wanted to know the identities of the witnesses so that it could take reprisals against employees who met with him, that was the College's business." He refused to provide the names.

Another example of Mr. Williams' bias, argued the Respondents, concerned the issue of counsel attending at interviews with witnesses. Mr. Williams refused to allow Ms. Currie to act as counsel for persons he defined as non-management witnesses. When Ms. Currie advised Mr. Williams that she had been contacted by some employees to attend at their interviews, Mr. Williams said "if Ms. Currie was going to be present he might as well cancel those interviews." Ultimately the matter was resolved by Mr. Williams allowing Ms. Currie to attend at some interviews, but not all. Mr. Williams characterized Ms. Currie as counsel for the management of the Ontario College of Art and, therefore, part of the management team. He treated her as if she had an adverse interest to the Complainant and to the non-management witnesses. His approach at these early stages of the investigation indicated that he did not intend to co-operate with the Respondents' counsel but rather that his intention in conducting these interviews was to substantiate the complaint.

Mr. Williams' attitude is most obvious when comparing the actual notes he took during those interviews with the notes of the witnesses and counsel for the witnesses.

Mr. Williams, asserted the Respondents, curtailed his investigation and fashioned it to achieve one end and one end only, that is to amass evidence to assist the Complainant. That approach is in direct contradiction with his duty as an investigating officer to be even handed and to gather evidence that supported and/or refuted the complaint. For example, one of the allegations concerns an incident between the Complainant and Mr. Van Kampen about her blouse. The witness who was present during the alleged incident expressly stated that she did not hear the comment. In Mr. Williams' notes he did not record that statement, but only commented that the witness did not believe Mr. Van Kampen made the statements. He did not record the complete answer that would have refuted the allegation. Another example concerned his notes regarding a meeting wherein the Complainant alleged that Mr. Van Kampen pounded the desk. The witness suggested that he did use his hands to make a point but denied that she had seen him pounding the desk. Mr. Williams' record of her evidence contained an altered version of that statement. Finally, Mr. Williams did not accurately record the answers given to him during the interview with Mr. Van Kampen. Mr. Williams stated that Mr. Van Kampen "would not deny categorically the allegations" and went on to state that Mr. Van Kampen was advised by counsel to adopt the denial made in the original response to the complaint. Ms. Currie's notes state that Mr. Van Kampen denied, without qualification, the allegations.

Counsel for the Respondents also took the position that Mr. Williams use of the word "terminate her employment" in his report was misleading; that the evidence was clear that the Complainant's courses were discontinued and that she was not offered a new contract for the following year; that the Complainant's employment was not terminated; and, finally, that the use of the word "terminated" indicated Mr. Williams' view that the Complainant had been unfairly dismissed. It was the submission of the College that had Mr. Williams used more neutral terms, the Commission would have had a better basis upon which to determine whether there were any grounds for the allegations.

The Respondents assert that Mr. Williams, in his report, described, at length, how courses are "mounted" at the OCA. Significantly absent in this section of his report, argued the Respondents, is the corresponding discussion as to how courses were discontinued. There is no reference to the decision making process or any indication of how many people were involved in that process. The

Respondents took the position that had Mr. Williams noted that at least 66 people were involved in the decision making process concerning the Complainant, the allegation of conspiracy would have been more difficult to sustain. In fact, it might have been a complete answer to the complaint.

Mr. Williams' report suggested that Mr. Van Kampen supported the Complainant's contention that she was capable of teaching courses in other departments. A review of the entire correspondence indicate that Mr. Williams' report is inaccurate. While it was suggested that the courses taught by the Complainant would be more appropriate in another department, it was never stated in those memos that her courses would be transferred or that she would be competent to teach them.

The Respondents contend that Mr. Williams did not interview all of the people that he should have in order to understand completely the position of the College. The Respondents' position is that the Complainant's courses were not to be offered in the next school year because they were not core courses of the College and were, in any event, under-enrolled. There was no inquiry into enrolments in other courses that were not discontinued, such as what would be considered "low" enrolment and why the decision was made to retain them. There was no investigation as to the business or academic reasons for discontinuing the courses taught by the Complainant. The omission of that information is significant.

Mr. Williams, in his report, set out the OCA's position with respect to redundancy and discussed the Teplitsky decision which dealt with the Complainant's grievance. He set out a description of the committees that had been set up to review the Complainant's qualifications. What he did not mention was that the Complainant was assessed twice, once in 1987 and again in 1988. Mr. Williams mentioned in his report that the Complainant had concerns about the assessment procedure, but did not mention that the matter had been dealt with by an arbitrator. Mr. Williams commented in his report that he did not pursue the issue of the grievance during his investigation. The Commission, however, should have had that information before it when it made its decision to proceed. That would have proven that the Respondents did not act improperly towards the Complainant. If Mr. Williams' report had had a description of the peer review committees, what they considered, what courses she was evaluated on and the fact that the faculty association supported her at the time, it would have raised doubt about whether all of these people could have been involved in a conspiracy and whether the Complainant had been treated unfairly. If Mr. Williams' report had contained a

complete description of those peer reviews and the Teplitsky decision, the Commission would have been in a better position to determine whether any of the allegations had merit.

Finally, Mr. Williams referred to the fact that the Complainant's allegations of conspiracy included the Faculty Association without mention of the fact that it had supported her vigorously throughout the peer review process and had pressured the OCA to reconsider the reviews after the first unanimous decisions of those committees. Mr. Williams' report stated that some of the executive members who gave direction to the Faculty Association's counsel were in a position of potential conflict, obviously because some of the people that might have been bumped were also faculty members. The impression left by Mr. Williams in his report is that the Complainant was treated unfairly, that she was never assessed properly and that the issue was left unresolved. That was not the case. The allegations against the Faculty Association, specifically those concerning Mr. Jacques Dagenais, were not revealed until the production of documents before the Divisional Court appearance. The significance of this late inclusion is that Mr. Dagenais died in 1991. The Respondents could not have known before his death that he would be included in the complaint and had no reason to question him about the allegations made against him.

These examples, argued the Respondents, point to the unfairness of Mr. Williams' incomplete record. Information that should have been before the Commission was not put and information that was highly prejudicial to the Respondents' position, without a corresponding accurate position of the Respondents, was put before the Commission improperly.

All of the misstatements and inaccuracies in Mr. Williams' report were then transposed into his case disposition, argued the Respondents. A case disposition is the summary that accompanies a report to the Commission. The decision to proceed to a hearing is based on the case disposition and full report. While the Respondents conceded that the Commission no doubt read the entire report, the case disposition is crucial in that it contains a summary of the report and it is that summary that the Commission no doubt relied on in reaching its decision to proceed.

In that summary, with respect to the issue of sexual harassment, Mr. Williams omitted a witness's corroboration of Mr. Van Kampen's denial of having made certain comments to the Complainant.

In dealing with the complaint regarding discrimination on the basis of race, colour, etc., Mr. Williams noted that the Complainant was the only East Indian on the faculty at the College. That is true. However, there is no mention of other minority groups employed with the College. The implication is that the staff of the College is comprised of an all male or all white faculty and that fact leads credence to the Complainant's allegations that she had been discriminated against.

Mr. Williams also stated in his summary that the Complainant was the only employee to be terminated because of redundancy. That is simply not true. In Mr. Nagel's affidavit and the notes of the interview with Mr. Hall-Humpherson, Mr. Williams was told that other people had lost their positions as a result of redundancies.

Mr. Williams, in his report, stated that the Respondents refused to advance any settlement proposals. He compared that to the Complainant, who, in his words, not only made offers to settle the matter but indicated a willingness to consider any proposal from the Respondents. Again, as the affidavit evidence shows, that is simply not true. In Ms. Currie's affidavit, she stated that the Complainant was only willing to have her proposal considered and that she was unwilling to consider any proposal of the Respondents.

The Respondents submitted that the same gross inaccuracies in the report were repeated in the case disposition and were listed under the "cogent reasons" intended to persuade the Commission to proceed to a hearing. The unfairness of that and the recommendations in the case disposition had an adverse impact on the Respondents.

The Respondents took the position they had been seriously prejudiced by the manner in which the investigation proceeded on other grounds as well. In August of 1989, the Complainant wrote to the Regional Manager of the Toronto Central Region of the Ontario Human Rights Commission with her response to the investigator's report. The Respondents filed their reply at the same time. The significance of the Complainant's letter are the new allegations against the Faculty Association found in it. The Complainant stated that the Faculty Association refused to continue to represent her and set out with some particularity, the "conspiracy theory" that she believed resulted in the discontinuation of her courses. The Complainant alleged that the Faculty Association participated in acts of discrimination by assisting the College. She further alleged that it was aware of the OCA's

intention to terminate her employment and provided assistance to it in that regard. She asked the Commission to investigate whether the Faculty Association had participated in acts of discrimination. Specifically the Complainant alleged that Mr. Dagenais, who was President of the Faculty Association at the time, participated in meetings with the College in which he endorsed and encouraged the administration's decision to discontinue her courses. She referred to a telephone conversation wherein Mr. Hathaway said that he had already "arranged" things with Mr. Dagenais. Subsequently Mr. Dagenais attempted to persuade the Complainant to accept the OCA's offer of settlement. The Complainant further alleged that, during the following month, Mr. Dagenais and the Faculty Association refused to support her claim that there was misconduct on the part of the OCA. The Complainant stated that it was her belief that he had knowingly assisted the OCA by his attempts to convince her to accept the OCA's conduct and in his refusal to take appropriate action on her behalf. More specifically she alleged that he and the Faculty Association failed to challenge the qualifications of the departmental assessment committees to decide whether her courses should be declared redundant and failed to represent her based on the fact that she had taught courses she was subsequently told she was unqualified to teach. The Complainant also alleged that Ms. Cathy Lace, who was acting as counsel to the Faculty Association, told the Complainant that she represented the Faculty Association, not her personally, and told her that she was being unreasonable and uncooperative in requesting a written evaluation of the criteria used to disqualify her from teaching.

While the complaints against the Faculty Association were specifically set out in the documentation obtained during the investigation, there is only one line in the report itself that indicates there were concerns about the Faculty Association and its counsel. The Commission was in receipt of correspondence between the Complainant and Mr. Williams that set out clearly the allegations against the Faculty Association. The Respondents were never given an opportunity to respond to those allegations and the failure to afford them that opportunity is highly prejudicial. Mr. Williams knew about these complaints and never gave the Respondents an opportunity to rebut them. He also never said anything in his report about the Teplitsky decision, the peer reviews or the efforts of the Faculty Association to assist the Complainant. When the Commission received the allegations about the Faculty Association, there was nothing in the report to balance the Complainant's allegations.

According to Respondents' counsel, the Respondents' concerns about Mr. Williams' bias were raised very early in the process. Ms. Currie wrote to the Commission in March of 1988, complaining of the

investigation and the investigating officer. She asked that a new investigator be appointed. She never received a response to that letter. In September of 1989, the Respondents' counsel renewed their complaint about Mr. Williams' behaviour, reported all the inaccuracies in his report and renewed their request that another investigator be appointed. Mr. Williams was made aware of the inaccuracies in his notes before he prepared his report and took the position that he would only correct inaccuracies related to time, dates and places. Mr. Williams investigated only to the extent that he thought necessary to justify the complaints of the Complainant and neglected to interview people who would have been in a position to provide him with more information.

DELAY - THE RESPONDENTS' POSITION

With respect to the issue of delay, Respondents' counsel reviewed the chronology of the complaint. She submitted that the five years of delay, up to May of 1992, lies clearly at the feet of the Commission and that no explanation has been offered for that delay. With respect to the period of time following January 1992, the Respondents' counsel argued that the Respondents had tried to bring on their application in a timely fashion and it was only because of the Commission that the matter was delayed even longer. Finally, in terms of scheduling the actual hearing, the problems encountered were due to the unavailability of Commission counsel resulting in another eight month delay. In her submission that has been an inordinate delay for which there is no excuse. That delay should be grounds for this Board to dismiss the complaint.

One of the problems arising from the delay is the death of a key witness, Mr. Jacques Dagenais. He died in 1991 and it was not until January of 1992 that the Commission advised the parties that it intended to proceed to a hearing on this matter. The Respondents did not even realize the significant role that Mr. Dagenais played in the officer's report until 1992 when the documents were filed in support of the motion before the Divisional Court. It was Respondents counsel's submission that Mr. Dagenais' participation played an important role and had a significant effect on the Commission's decision to appoint a Board of Inquiry. By the time the Respondents became aware of the importance of Mr. Dagenais, it was too late for them to interview him. He would have been able to refute all of the allegations that have arisen with respect to the Faculty Association. Had the matter been processed in a more timely fashion or if there had been more timely disclosure, the Respondents would not be faced with the burden of answering the allegations against the Faculty Association.

Another problem resulting from the delay relates to the death of another participant and that is Ms. Diane Myers, the Union Steward who was present during one of the witnesses' interviews with Mr. Williams and whose notes were relied on by the Respondents. She died in 1991 and, obviously, cannot now give evidence as to what was said at that interview. The difficulty with dealing with a delay of this magnitude is that, in dealing with issues of credibility, a party is entitled to make a full and complete defence. It is not sufficient for a party to say they have some witnesses, probably enough to refute the claim.

The Respondents are entitled to put forth their best evidence and the fact that Mr. Dagenais is a key figure in the complaint, results in severe prejudice to their ability to do so. It was the Respondents' position that, when dealing with issues of credibility, evidence should be given while it is still fresh in a witness's mind and the person who has to judge or choose between two witnesses is therefore in the best position to decide who is more credible.

ABUSE OF PROCESS - THE RESPONDENTS' POSITION

It was the position of the Respondents that the breaches of the duty of fairness that have occurred in this case cannot be cured by a hearing. It was their submission that the Respondents should not have to go through a full hearing to find out at the end of the day that there was a breach of procedural fairness and that the Commission's decision to appoint a Board was tainted by bias, therefore rendering its decision a nullity. That procedural unfairness and bias, argued the Respondents, amounts to an abuse of process. It asked that this Board either decide that the decision to appoint a Board of Inquiry was a nullity or, in the alternative, that the entire process leading to the appointment was an abuse of process and a denial of the principles of natural justice so that to continue with the hearing would be a further abuse of the process.

DELAY AND ABUSE OF PROCESS - THE COMMISSION'S POSITION

Commission counsel submitted that the test is whether the evidence of bias, the evidence of delay and the evidence of prejudice to the Respondents has the cumulative effect of denying the Respondents a fair hearing. If the Board is so persuaded, the hearing should not proceed. If the Respondents cannot get a fair hearing, he conceded that it would be an abuse of process to continue. He referred the Board to the actual allegations of the complaint. The first allegations are that Ms. Khalil was subjected to sexual harassment and sexual solicitation by Mr. Van Kampen. There are only two

people who can testify directly about what was said to Ms. Khalil, Mr. Van Kampen and Ms. Khalil. Both are available and there is no suggestion that they cannot remember the circumstances.

Commission counsel argued that certain other witnesses have been elevated by the Respondents to the status of key witnesses. Ms. Vanderburg is one of those. Ms. Vanderburg is available to testify and there has been no suggestion that she will be unable to remember the events. Therefore, submitted Commission counsel, the key witnesses with respect to the allegations of sexual solicitation are available and are capable of testifying.

With respect to the secondary allegations, that is those involving collusion between Mr. Van Kampen and Mr. Hathaway that resulted in Mr. Van Kampen's decision to discontinue her courses, the allegation is that they persuaded others on the faculty to discontinue her courses because she rejected Mr. Van Kampen's sexual solicitation. The key witnesses in this regard are all available and there has been no suggestion that they cannot remember the events.

With respect to the tertiary allegations, that the peer assessment and procedure was tainted and was orchestrated by the College so that Ms. Khalil could not receive a proper and fair assessment, Commission counsel pointed out that Mr. Dagenais did not sit on those committees and the evidence as to what happened at those meetings would not have come from him in any event. If there is evidence about the departmental assessment committee's meetings, it will have to come from other witnesses. There has been no suggestion that the other members of the departmental assessment committees are not available as witnesses.

With respect to the issue of whether the Respondents will be able to defend the allegations thoroughly, Commission counsel submitted that they investigated thoroughly at the time of the complaint and have known since the commencement of the investigation what witnesses would be able to assist them in presenting their case. The only person missing from the list of witnesses is Mr. Dagenais. Commission counsel submitted that I should restrict my findings to issues of credibility concerning Mr. Dagenais. It does not mean that the case cannot go ahead because Mr. Dagenais is unavailable.

Commission counsel submitted that the Respondents had concerns at the onset of the investigation as to the completeness and impartiality of the investigation. As a result it conducted an extensive investigation of its own and determined which witnesses would be necessary to prove its case. They cannot argue now that because the officer's report to the Commission was biased and incomplete, they have been prejudiced. In this case there is no suggestion that the Respondents relied on the report of the investigating officer, thereby missing the opportunity to gather its own evidence. The Respondents have had notice of the allegations against them and they have not suggested that they do not have the evidence necessary to respond to those allegations.

With respect to the issue of delay before January of 1992, Commission counsel pointed out that if anyone is to be held responsible for that delay, it is the Respondents. After that date several factors caused the delay, including the application for judicial review, the motion to remove Ms. Backhouse from the Board of Inquiry and the fact that Respondents' counsel was on maternity leave until July of 1993.

In summary, Commission counsel submitted that the test to be applied in these cases has been approved and applied by numerous Boards of Inquiry and endorsed by the Divisional Court and the Court of Appeal of Manitoba. The test is not simply whether there has been a delay or even an abuse of process, but rather whether the Respondents can still get a fair hearing before a Board of Inquiry, notwithstanding those irregularities. The evidence is clear that the College of Art and the personal Respondents are not claiming they do not have either the evidence or the witnesses to proceed. They are claiming that two witnesses they might have called to support the testimony of other witnesses are no longer available. Those two witnesses are not key to the first or second allegations and are only incidental to the third allegation. That cannot be seen as significant prejudice and cannot be found to impair their ability to defend themselves at a hearing.

DECISION ON PRELIMINARY MOTIONS

Abuse of Process

The grounds upon which the Respondents have based their motion to dismiss are delay and bias. As a third or separate ground the Respondents took the position there had been an abuse of process justifying the dismissal of the complaint. Dealing first with the issue of bias, both parties have relied on the findings in the *Alan Shreve v. Corporation of the City of Windsor and Jerry Hancock* (1993),

18 C.H.R.R. D/363. That case is analogous to the case before me and, therefore, must be compared not only on the basis of the findings, but also on the facts.

That case began in a manner very similar to the one before me. In a written preliminary decision, the Board denied a motion from the Respondent to adjourn the proceedings pending application for judicial review. The Commission filed a motion to quash those applications on the grounds that they were premature. That motion was granted. The Respondent raised before the Board of Inquiry several preliminary motions, including one that the complaints be dismissed or permanently stayed on the grounds that the process followed by the Commission and its staff leading to the appointment of the Board of Inquiry was an abuse of process, that a fair hearing could not be held because of the delay between the events and that the hearing and that a lack of disclosure to the Respondent by the Commission deprived them of an adequate opportunity to prepare their case. The Respondent submitted that it would be an abuse of process for the Board to continue. Thus, although the motions overlapped in that they all involved questions of abuse of process, the issues of delay and non disclosure were subject to principles distinguishable from the general concept of abuse of process and were dealt with separately.

One of the alleged abuses of process arose from the allegation that the Commission officer assigned to investigate the complaint biased the proceedings by taking on the role of an advocate for the Complainant by manipulating the contents of the complaint and by distorting the case record that ultimately went to the Commissioners for review. There was also an allegation that the Commission was using that particular complaint for the ulterior purpose of imposing on the Respondent corporation an affirmative action hiring plan that went beyond the scope of the complaints. The evidence with respect to the latter consisted of statements made in conversation by Commission officers and the nature of the settlement proposed by the Complainant and the Commission. That proposed settlement included a provision involving a policy of recruitment of minority groups. The Board did not find the evidence of the conversations particularly persuasive, but was more influenced by the evidence of the proposed settlement. The Board found, however, on the latter ground that it was not an abuse of process and, even if it were, it could be readily rectified in the normal course of proceedings before a Board. The jurisdiction of the Board in fashioning a remedy would be limited to granting an order related to the complaint. Any order beyond that would be outside its

jurisdiction. The Board did not find that there was any serious prejudice to the Respondent if the Commission attempted to make something bigger out of its case.

On the issue of the actions of the investigating officer, the Board in *Shreve* was provided with an exhaustive examination of the alleged discrepancies between the material that the officer had before her and the record she prepared based on that material. The record was part of the file that the Commissioners had before them when they decided to refer the complaint to a Board of Inquiry. On the basis of the evidence before it, the Board found that there were legitimate concerns about the record prepared by the investigating officer. It found that the officer had played a significant role in determining the scope and content of the complaint and that she made assertions favourable to the Complainant or unfavourable to the Respondent which seemed to be unsupported by the material before her. The Board was satisfied that she adopted an advocacy role on behalf of the Complainant. The Board, however, was prepared to accept that some of those discrepancies in the record were merely the consequence of human error and not intentional. Nevertheless, the Board found that the record did show the officer had adopted a biased approach that favoured the Complainant, particularly given that the role of the investigating officer is to "conduct an impartial investigation to the extent that officers are advocates, they are advocates for the *Code* and its enforcement." Her investigative approach raised a question as to whether the efforts of the Commission were seriously compromised.

One concern expressed by the Board in *Shreve* was the fact that the investigating officer referred extensively to the notes she had taken during the fact finding/settlement discussions in her final case summary for the Commissioners. The Board found that the officer's use of those statements was a breach of confidentiality which the parties had a right to expect and which was particularly unfair to the Respondent. The Respondent never had an opportunity to reply to those comments before the report went to the Commission. In fact, there was some doubt that the Respondent was even aware that the notes existed. The Commissioners should have been aware of the fact that this portion of the officer's response was drawn from an inappropriate source. As well, the Board expressed surprise that no one at the Commission reviewing the response deleted those comments before they went to the Commissioners. Even with those concerns, the Board did not think that the problems with the record were an abuse of process sufficient in themselves to effect the ability of the Respondents to get a fair hearing. The Board noted that the *Code* placed the officer in an "ambiguous" role. The

Board was not of the opinion that the officer, in making mistakes in her record, did so with any malicious intent that would constitute an abuse of process.

Bias

In the case before me the Respondents argued that the investigator's report was incomplete, inaccurate and misleading. They pointed to the discrepancies between his report and the affidavit evidence of the people he interviewed. Notes of the people who attended at those interviews seems to support the claim of the Respondents in this regard. It is their position that because the Commission only had his reports before it, it came to the conclusion that it should appoint a Board of Inquiry to hear the complaint. Had the report presented the results of an objective, unbiased and complete investigation, it would have come to another conclusion.

There are two distinct areas of concern to the Respondents in this case. The first deals specifically with the comments allegedly made by Mr. Van Kampen to the Complainant about a blouse she was wearing. The Respondents took the position that the investigating officer misstated Mr. Van Kampen's denial of that comment and gave the impression that, initially, he was prepared to admit to making that remark, until his counsel interrupted. As well, the officer did not include in his report the fact that Ms. Vanderburg, who was present when the alleged remark was made, stated that she never heard Mr. Van Kampen make any such remark about the Complainant's blouse.

Even if I were to accept, which I do, the Respondents' position that Mr. Van Kampen categorically denied the specific allegations concerning those alleged remarks and that Ms. Vanderburg corroborated his denial, I am not persuaded that the decision to forward the complaint to a hearing would have been different. The allegation concerning the blouse was only one of the examples of sexual harassment that the Complainant described to the officer. The key witnesses to those allegations are the Complainant and Mr. Van Kampen. A finding on those allegations will involve an issue of credibility as between those two parties. Their credibility might be bolstered or maligned by the evidence of others. Those findings are more appropriately arrived at in the adversarial setting of a hearing where the sworn evidence of the parties will be subject to challenge. To the extent that the motion to dismiss is based on the bias of the investigating officer, it is dismissed.

The second area of concern involves the incomplete and inaccurate portrayal of the decision making process of the Ontario College of Art generally and the decision making process as it related to the Complainant specifically. According to the Respondents, the investigating officer's failure to include a complete description of the decision making process within the College, including the number of people involved and the various procedures used, misled the Commission. More particularly, the Respondents took the position that the investigating officer's failure to describe how that decision making and appeal process was applied to the Complainant was also misleading and led the Commission to the conclusion that a Board of Inquiry was necessary.

While I agree that the investigating officer's report could have been more thorough with respect to the issues raised by the Respondents, I am again not satisfied that would have made a difference in the decision to forward the complaint on to a hearing. It is the Complainant's allegation that those processes were tainted by ulterior motives and that the decision of the members of those various committees were influenced by Mr. Van Kampen. Even had the report set out the various procedures in detail, there remained the allegations about the members of the committees. Again that issue is one that is better tested at a hearing where the members of the Committee can be questioned under oath.

In conclusion, with respect to the issue of bias on the part of the investigating officer, I am not satisfied that the concerns raised by the Respondents are significant enough to result in a finding that the decision to refer this matter to a Board of Inquiry was improper or should be declared a nullity. The allegations made are serious and the consequences to the Complainant significant. Notwithstanding the incompleteness of the investigating officer's report, the Commission had before it enough information to allow to arrive at the decision it did.

Delay

The next ground for dismissal is delay. There has been a growing body of jurisprudence on this issue due, in large part, to the fact that complaints filed under the *Code* have historically been subject to lengthy delays for various reasons. In the cases provided to me it is clear that in order for a complaint to be dismissed on the grounds of delay, a Board of Inquiry must first be satisfied that there has been an inordinate delay for which there is no excuse and that delay has seriously prejudiced a party. In this case, it would appear, on a cursory review, that a complaint filed in 1987 that does not proceed to a hearing until seven years later has been subject of inordinate delay. However, as can be seen

from the evidence, that delay was the result of several actions taken by the parties or their counsel. Approximately five months after the complaint was filed, a fact finding conference was held. As the result of initial fact finding and conciliation meetings, a decision was made that further investigation was necessary and that investigation continued from January of 1988 to February of 1991. During that two year period of time there were exchanges of draft reports and final reports as well as replies to those reports. It took another year before the Commission wrote advising the parties that it intended to ask the Minister to appoint a Board of Inquiry. During that period of time Respondents' counsel had made it clear to the Commission that they considered the investigator's report incomplete and biased. While no evidence was given with respect to the reason the investigation took as long as it did, I am prepared on the basis that the information before me to conclude that the delay was not inordinate in that all parties were aware of the status of the file and were taking steps to deal with the outstanding issues.

From January of 1992 until the date of the hearing there were several actions taken which explain the delay. The blame for that delay cannot fall on either party. They are part of the process and neither party should be penalized for taking advantage of that process.

Therefore, while at first blush it would appear that the delay has been inordinate. A review of the file suggests that in the circumstances most of the delay can be explained.

The real issue is whether or not that delay has caused such prejudice to the Respondents such that they cannot present a full and complete defence to the allegations. Again, a review of the jurisprudence provided to me dictates that question is best answered after the hearing. Whether the delay has caused prejudice in that peoples' memory of the events has been so compromised that it is difficult or impossible to get to the truth is a matter that can only be determined after hearing the witnesses. With respect to the issue of the unavailability of witnesses, the only significant witness that is unavailable is Mr. Dagenais and the allegations concerning him form only a small part of the case the College must meet. If, in fact, Mr. Dagenais's absence from the proceedings is prejudicial, that becomes a matter for argument at the conclusion of the hearing. During the processing of this complaint, both parties have conducted their own exhaustive investigations into the allegations and they did that soon after the complaint was filed. They had before them at the time and now sufficient

notice of the issues and of the witnesses necessary to address those issues and I am not persuaded that the Respondents will not get a fair hearing if they proceed.

In the *Shreve* decision relied on by both counsel, the Board found that, taken separately, the complaints regarding the bias of the investigating officer, delay and restricted disclosure by the Commission were not enough to deprive the Respondents of a fair hearing. However, it did decide that, in combination, the circumstances prejudiced the ability of the Respondents to prepare their case in a timely fashion which violated the principles of fairness and could not be cured at the Board of Inquiry stage. That is not the case before me. The parties have had sufficient disclosure and have completed sufficient investigation for them to be able to prepare a case. Whether or not the delay has resulted in prejudice is a matter for argument.

Therefore the motion to dismiss the complaint is dismissed and we will proceed with a hearing on the merits as scheduled.

THE COMPLAINT

The Complainant Khalil alleges that her right to freedom from sexual solicitation and reprisal for the rejection of that alleged sexual solicitation has been infringed. As well she complains that her right to equal treatment with respect to employment and freedom from harassment in the workplace has been infringed because of her race, colour, sex ancestry, place of origin and ethnic origin. She has named, as Respondents, the Ontario College of Art (hereinafter referred to as the "College"), Mr. Jan Van Kampen, Chair of the Communication and Design Department, and Mr. Norman Hathaway, President of the College.

Because a finding in this case depends to a large extent on the credibility of the witnesses, the truth of the allegations lies in the evidence of the witnesses.

The Complainant began teaching at the College in 1970. At the time of the incidents giving rise to her complaint she was teaching three lecture courses in the Communication and Design department (hereinafter referred to as "C&D"), namely, Information: East/West Interface; Information: Eastern Approaches to Art; and Design: Information and Costume. Mr. Jan Van Kampen became the Chair

of that department in 1986. The allegations with respect to sexual solicitation concern various acts and statements attributed to him between the summer of 1986 and the spring of 1987.

EVIDENCE OF THE COMPLAINANT

The Complainant first met Mr. Van Kampen in July of 1986 at the College. They met in the hall in front of their department. He introduced himself and commented to the Complainant that she could be a model. He said he knew who she was and knew that she was one of the best instructors.

The next incident occurred during the same summer when the Complainant was at the College to interview new admissions. She was wearing a light beige shirt with a pinkish tinge and, as she passed Mr. Van Kampen in the hallway, he commented on how beautiful the shirt was. Then he said "but I wonder how you would look without the shirt?" Although the comment was made in the hallway and there were people passing at the time, the Complainant did not know whether anyone else heard the comment. At a meeting with Ms. Nancy Hood, the Director of Human Resources, Mr. Hathaway, the President of the College at the time, and Ms. Blaise Enright, she told them what Mr. Van Kampen had said to her and voiced her concern that she did not think it appropriate. Ms. Hood advised her to ignore the comment. She spoke to Mr. Hathaway at the time about the comment and he gave her the same advice. According to the Complainant, Mr. Hathaway took the comment very lightly, suggesting that everybody liked the Complainant and that Mr. Van Kampen was simply trying to make friends with her. Ms. Enright was present during the entire discussion but was not called as a witness.

Courses began in the Fall of 1986 and the Complainant testified that Mr. Van Kampen would frequently enter her classroom during her lectures and ask her to step outside to speak to him.

During the Fall of 1986 there were a series of further encounters. In one instance Mr. Van Kampen commented on the fact that the Complainant did not need to wear lipstick because her lips were beautiful without it. There were two students present at the time the comment was made, one of them, Sultana Asuzi, who did not testify at the hearing. The Complainant said nothing to Mr. Van Kampen but did tell Ms. Hood what he had said to her. Ms. Hood told the Complainant that she would speak to him on her behalf. The Complainant again spoke to Mr. Hathaway about Mr. Van Kampen's comment and Mr. Hathaway assured her that he too would speak to Mr. Van Kampen.

Mr. Hathaway told the Complainant that Mr. Van Kampen was his friend and that she should not take his comments seriously.

On another occasion the Complainant was standing in front of the office when Mr. Van Kampen came up behind her and put his arms around her. The Complainant said nothing to him at the time, simply moved out of his way. She was embarrassed because he had done this in front of students and she was concerned about her reputation. Later she told Mr. Jacques Dagenais, the President of the Faculty Association, about the incident. She also told Ms. Enright, Ms. Hood and Mr. Hathaway. Ms. Hood told the Complainant that they would have to consider some alternatives and suggested that the Complainant's three classes be removed from the C& D department to the Liberal Arts Department under Arturo Nagel. Mr. Hathaway agreed that might be a reasonable alternative and said he would "work on it." He again told the Complainant that Mr. Van Kampen was a good friend of his and not to worry about these incidents. He stated that they would settle the matter and asked the Complainant not to speak to anyone about them.

Another incident involved a note allegedly written by Mr. Van Kampen to the Complainant and placed in her mail slot. That note contained an invitation for the Complainant to meet with him at either a cottage or a vacation place. The Complainant destroyed the note because she did not believe it would have any particular significance at the time and because she was concerned that her husband might find the note and reach the wrong conclusions. She recalled the note mentioned that Mr. Van Kampen's wife would be away for the weekend and that they could get to know each other better.

On another occasion the Complainant arrived at his office to attend a meeting. They discussed the food and customs of various cultures. He told the Complainant that he liked brown people or Asian people and said that he had never had "a taste of those kinds of people". When the Complainant asked him what he meant he said "you know what I mean." The Complainant was unsure of the exact words used. Mr. Van Kampen spoke about his authority and power within the College and repeated his comments to the effect that he had never had a taste of "Asian ladies or brown ladies."

The Complainant received another note from Mr. Van Kampen asking her to meet with him to discuss the curriculum. When she arrived at the meeting he asked her whether she had received his previous note and what she had decided. When she told him she had decided to do nothing, he explained that

he was the Chair of the department and that he had the power to do anything he wanted. It was about this time that the Complainant spoke again with Mr. Hathaway and Ms. Hood about Mr. Van Kampen's advances. She told them that she was having a very difficult time with him and that she was afraid that he was looking for a relationship. Ms. Hood advised her not to speak to anyone and assured her that she had *de facto* tenure. She further advised the Complainant that they were going to act quickly to transfer her classes from Mr. Van Kampen's department to Mr. Nagel's department.

The Complainant confronted Mr. Van Kampen about the note he had written her about the weekend and told him that she intended to tell Mr. Hathaway about his behaviour. Mr. Van Kampen told her that Mr. Hathaway was his best friend and that there was nothing she could do about it. At this point in the meeting he became loud and began gesturing with his hands. The Complainant asked Ms. Jeri Vanderburg, his secretary, to sit in on the meeting and act as a witness. Ms. Vanderburg was hesitant but did join them. Mr. Van Kampen changed the subject and no further comments were made at the time.

On another occasion the Complainant was walking up the stairs towards Mr. Hathaway's office and, as she passed Mr. Van Kampen on the stairs, he flipped her hair off the side of her face with his hand.

The Complainant decided to speak to Mr. Dagenais and the Faculty Association about her problems. She told Mr. Dagenais at the time that, if her three classes could be transferred to Mr. Nagel's department, she would be happy and would not seek further redress.

On yet another occasion while Mr. Van Kampen was talking to the Complainant, he made some comments regarding having had experience "with only the front part and not having sex with the rear." The Complainant later conceded that he did not use the word "sex", although it was clear to her that that was what he meant. The Complainant spoke to Ms. Hood the next day about this comment and Ms. Hood told her to calm down, not to discuss the incident with anyone and to wait until they could transfer her classes. Mr. Hathaway, when he was told about Mr. Van Kampen's comments, expressed surprise but conceded that it was possible that Mr. Van Kampen had said those things. He suggested to the Complainant that Mr. Van Kampen liked her and asked what was wrong

with that. He asked her to go back to teaching her class, not to discuss the incident with anyone and assured her that he would take care of things.

It was the Complainant's evidence that any discussions with respect to transferring her classes were initiated by Ms. Hood, continued in the presence of Mr. Hathaway and were presented to her as having been agreed to by all concerned. The Complainant believed that her course change would occur before February of 1987 and was preparing herself for that transfer. She spoke to Mr. Van Kampen about the fact that her courses were to be transferred to Mr. Nagel's department and he did not object, although he did say "You know, you will be out soon."

The Complainant testified that early in the school year she had discussions with Mr. Van Kampen about teaching different courses within the C&D department. At the time she had an interest in exploring these options but later, after the incidents related above, changed her mind and wanted merely to be removed from Mr. Van Kampen's department.

On January 20, 1987, Mr. Van Kampen wrote a memo to the Complainant acknowledging receipt of her proposals for new course outlines and advising her that it was not his intention to recommend her three courses be continued for the 1987-88 academic year. He stated in the memo that the courses submitted by her would be more appropriately offered through the Liberal Arts department. It was the Complainant's evidence that Mr. Van Kampen told her that he was going to recommend that she be placed in Mr. Nagel's department so that people would not have to know that they had had a "fight or quarrel."

The Complainant was subsequently formally notified by letter that Mr. Van Kampen did not intend to recommend that the three courses she taught in his department be offered for the next academic year. At about the same time she received a letter from Mr. Dainis Miezajs, Chair of Department of Fine Arts, advising her that he would not be recommending her course "Art and Design" be offered for the following academic year. He also advised her that it would be impossible for him to recommend her to teach any other course in his department. At the same time she was advised by Mr. Arturo Nagel, Chair of the Liberal Arts Studies Department, that he did not intend to recommend her courses "Modern/Narrative Dance/Beginners" and "Modern/Narrative Dance/Advanced" be offered in the next year's course outline.

The Complainant was shocked when she realized that none of her six courses were to be continued. As far as she was aware, the course outlines had been approved for the years 1986/87, 1987/88 and 1988/89. Those courses had been processed through the departmental meetings and Curriculum Committee meetings and, as far as she was concerned, it had been agreed that her courses would continue at least for those three years.

She spoke to Mr. Nagel about the two dance classes he was proposing to eliminate from his department. When she asked him why he was eliminating her courses he said "I have pressure Khalatun and I cannot talk." He went on to tell her that Mr. Hathaway had asked him to eliminate her courses and that she should speak to him. She also spoke to Mr. Miezajs about the course that he was proposing to eliminate from the curriculum. He told her that the decision was based on a request from Mr. Van Kampen.

The Complainant testified that she was shocked at this development. As far as she was concerned, discussions were under way to transfer her three classes from C& D to Liberal Arts. She referred to a memo from Mr. Van Kampen to her dated December 5, 1986, in which he reviewed her proposals for future course descriptions. While the memo acknowledged the validity of her courses, he noted in the memo that the Liberal Arts offered courses that were of a similar content and that it was prepared to introduce academic courses suggested by C&D. He concluded with the following paragraph:

In view of future curriculum plans, I am concerned about how reasonable it is to continue supporting subjects in the curriculum of C&D that really belong elsewhere and should be carried by Liberal Arts.

I plan to review this important issue again with Liberal Arts and I continue to be available for further discussions with yourself.

She responded to that memo by advising Mr. Van Kampen that she was interested in teaching the new courses he had referred to in the memorandum and asking for an opportunity to discuss the contents of those courses. Mr. Van Kampen replied by letter dated December 19, 1986, that the new courses he had referred to in his previous memo were intended to be business courses. He commented on the fact that the College curriculum contained weaknesses and should include courses incorporating language and verbal communication skills. He then set out a list of the class populations to illustrate the enrolment figures for each course. He noted that Liberal Art's mandate was to look after the

humanities courses and that C&D relied on Liberal Arts to teach history and other theoretical courses. He went on to state that he had no choice but to place the Complainant's courses, with others, in priority based on the College's need to alleviate pressure in the 1987/88 academic year.

Finally she referred to a memo of January 20, 1987, from Mr. Van Kampen to her in which he advised her that he was not going to recommend the curriculum include her three C&D courses for the 1987/88 academic year and that he intended to offer alternative courses more essential to the core program. He concluded by stating that the courses she had submitted for consideration on social history did not represent the core courses that he was hoping to provide in C&D and would be more appropriately offered through the Liberal Arts study program.

Based on those memos and her conversations with Ms. Hood, Mr. Hathaway, and Mr. Van Kampen, it was the Complainant's belief that her three courses would be transferred to the Liberal Arts Department. In fact, when Ms. Hood set up a meeting with Mr. Hathaway, the Complainant, and herself for February 19, 1986, the Complainant believed it was to discuss the transfer of those periods and possible course titles and changes. When she arrived at the meeting Mr. Hall-Humpherson was also in attendance. He had been the Chair of Foundation Studies and the Complainant believed that he was the Chief Administration Officer at the time of the meeting. Mr. Hathaway told her that they were not there to discuss the transfer of her courses but rather told her "nobody wants you." The Complainant could not believe what she was hearing and asked whether he was joking. His response was "No, I am not joking. We do not want you." He asked the Complainant to resign. She could not believe what she was hearing. She had no warning that was going to be the content of the meeting. She said to Mr. Hathaway "How can you do that? So Mr. Jan Van Kampen was right when he said you always were a friend." Mr. Hathaway told her that she was being asked to leave because none of the three chairs of her former departments wanted her. She asked about his opinion and he allegedly said "I don't want you either, just sign." At that point Mr. Hathaway told the Complainant that he had discussed this matter with Mr. Dagenais and the Faculty Association. The Complainant again raised the issue of Mr. Van Kampen and Mr. Hathaway being friends, at which point Mr. Hathaway got very angry and began pounding his desk. He told the Complainant that he was trying to save her agony by asking her to resign. He reviewed a letter that listed the College's offer in exchange for her resignation. The Complainant told him that she did not intend to sign anything and that if he wanted her to sign something, he would have to type it up in a formal manner. At that point

Mr. Hathaway said "If you don't sign I'll make you go through such a humiliation and I will see that you never come back in this College again." He repeated that statement over and over. The Complainant was almost in tears and Mr. Hall-Humpherson quietly advised her to sit down and listen and that, if she was not prepared to do anything, she could wait until she could contact the Faculty Association.

In reviewing the contents of the letter Mr. Hathaway made mention of some committees. The Complainant was unaware that there had been any committees set up regarding complaints. Mr. Hathaway told the Complainant that he would make her go through these committees that "I'll set them up and make a nightmare for you. So, save all this humiliation, I request you, I suggest that you resign now." According to the Complainant, Mr. Hathaway advised her that a committee would be set up to re-examine or re-evaluate her. He reminded her, however, that nobody wanted her at the College and that "you are not going to make it because I'll be sure that you don't make it." The Complainant asked why he was going to re-evaluate her and he said it was to qualify for other courses, but that she would not be coming back. That was all Mr. Hathaway said about the committees at the time and it was not until the Complainant received a letter dated February 25, 1987, that she understood what the reference to the committees was intended to mean. The Complainant was told not to discuss this matter with anyone and, at the conclusion of the meeting, Mr. Hathaway gave her Mr. Dagenais's number in New York City where he was attending a conference. The meeting lasted about 45 minutes.

A week after that meeting a letter arrived from Mr. Hathaway repeating that the courses taught by her in the 1986/87 academic year would not be offered in 1987/88 academic calendar. As a result the College was not recommending her for a teaching appointment for the following year. The letter went on to say:

As you know, the College of Art and the Faculty Association are currently involved in negotiations which would deal with the reduction of a Faculty member's teaching courses. Although the actual agreement between the College and the Faculty Association has not been finalized, the College is prepared to proceed in a fashion that it believes to be consistent with the discussion and negotiations. This procedure would entail the following:

- a) A small ad hoc committee will be established to review and assess your credentials and qualifications with a view to decide on whether you have the ability and qualifications to teach a course or courses assigned to less senior faculty members or to teach courses not yet assigned.

- b) The composition of this ad hoc committee will be determined by the president and the academic co-ordinator.
- c) If no courses are available you will be terminated and provided with the maximum severance pay of 26 weeks or you will be allowed to continue with the reduced teaching load in the event that courses are available.

The letter went on to note that if the Complainant did not wish to go through the assessment committees, the alternative was that she voluntarily resign. The letter set out terms for the resignation which included severance pay and letters of reference. The letter concluded by stating that if the Complainant elected not to resign on the terms suggested, the College intended to proceed in accordance with the assessment procedure outlined in the letter to determine whether other courses might be available for the Complainant in the coming year.

The Complainant testified that she was very disappointed and that she lost faith in people as a result of the way she had been treated. The only rationale she could attribute for the College's actions was her repudiation of Mr. Van Kampen's approaches. She believed she was the only teacher not returning for the next academic year and that the refusal of all three department heads to recommend her courses was unjustified, given her long service and reputation.

The Complainant discussed the letter with the Faculty Association and was directed to outside counsel for advice. The Complainant elected to go through the evaluation process, believing that her six teaching periods would be returned to her after the evaluations. She did not understand the procedure because the committees were new and, in fact, had not been formally approved by either the College or the Faculty Association at that time. She believed that committee members would discuss the subjects they would be offering to determine whether she wanted to teach any of them and whether she was qualified to do so. She had previously taught several of the courses from the list provided. It was her belief that the Collective Agreement provided that if a teacher was declared redundant, he/she would be released unless similar courses were being offered. She believed that was the case in her circumstances and that the evaluation process would prove that. It was her understanding that a Departmental Assessment Committee (hereinafter referred to as "DAC") would be set up by the department chairs who would appoint or select members from within the department. It was her opinion at the time that she would be offered six class periods in different departments on different subjects. Those departments had kept on teachers with less seniority than her and she believed she would be able to bump them.

Cathy Lace, counsel appointed by the Faculty Association to assist the Complainant, asked her to bring in her resume and certificates to prepare for the assessments. The College had provided them with the school calendar, including a description of the courses. The Complainant read through those descriptions and selected only the courses that she had taught previously, now described under a different title or a slightly different course description. It was her evidence that the criteria with respect to the content of the courses was flexible and was liberally interpreted. As a result, in reviewing the courses submitted, it was her belief that she was qualified to teach several of them. She testified that she was evaluated in 1988 or 1989 over a period of two or three days. Before the committee meetings she and Ms. Lace prepared her resume, teaching qualifications and certificates in a binder of almost 200 pages. That binder was intended to be circulated amongst the committee members before the meetings so that they would have time to read and consider the material. None of those binders were made available to the committees prior to the assessments. For example, with regards to the assessment for the Department of Fine Arts, the members of the committee included teachers and students. They did not receive her materials in advance of the meeting. The Complainant reviewed her books and publications as well as some illustrations, drawings, paintings and slides. At the conclusion the committee advised her that it was their opinion her courses would be more appropriate in Graphic Arts than Fine Arts because they included drawing classes. They concluded that she was unable to fulfil the requirements of the described course.

The Complainant was assessed by the DAC of the Liberal Arts Department. Again, the materials that had been prepared in advance were not forwarded to the committee. Mr. Nagel chaired that committee and, when the Complainant suggested that he review her display work first, he advised her that he would "do it my own way." He began his discussions with the new courses the Complainant had suggested she was qualified to teach. The Complainant proposed that he start with the courses that she had already taught but Mr. Nagel insisted that they begin with the new curriculum courses. At one point the Complaint alleged that Mr. Nagel said "it is a done deal." This meeting lasted about three hours and the Complainant described it as humiliating. As a result of that assessment committee meeting, the Department of Liberal Arts advised her that she was not qualified to teach the courses in their department.

The Complainant was also interviewed by the DAC for Applied Arts and Design. Again the binder containing the Complainant's qualifications and certificates did not arrive in advance of the meeting.

The Complainant called Ms. Lace to inquire as to why the binders had not been delivered and was told that they had been delivered to Mr. Hathaway's office. She also advised the Complainant that the President of the Faculty Association, Archie Graham, had also been provided with one in advance. As a result of the evaluation process, the DAC of Applied Arts and Design advised the Complainant that she was not qualified to teach in that department.

The Complainant also applied for a position in the Department of Experimental Arts teaching a number of drawing and painting classes. Mr. Jim Tiley arrived first and said to the Complainant "I don't understand why Mr. Jan Van Kampen is doing this to you?" She did not mention any of the problems she had experienced previously. She showed the committee the publications and drawings that she had brought with her and answered their questions. This evaluation took approximately three hours and was described by the Complainant as a nightmare. As a result of that assessment Experimental Arts advised the Complainant that she was not qualified to teach in their department.

The Complainant applied for a teaching position in C& D. Again the binder was not received by the DAC in advance. Mr. Jerry Sevier chaired that DAC and told the Complainant "I know what to do, I'm not asking you what to do. I don't have to know, because Mr. Jan Van Kampen already instructed us what to do." During the assessment the Complainant alleged that the committee members were joking and mocking her. They refused to look at the illustrations she provided and did not look at more than one-half of the work that she had brought for their consideration. While she was showing her slide presentation the committee talked amongst themselves and paid no attention to the presentation. After a while one of the committee members told her that they had had enough and turned off the projector. Another of the committee members stated he had to leave and when the Complainant noted that they had not asked her any questions said "we know what to do, don't worry, already Mr. Jan Van Kampen told us." She subsequently received a letter advising her that she was not qualified to teach any of the courses offered in that department.

She applied for consideration for a course in Foundation Studies. She had taught at least three or four classes in that department since she began teaching in 1977. The course she applied for was slightly different, but the Complainant felt that she was qualified to teach it. The DAC did not have the binder she had prepared and, while they did look at her work, they spoke amongst themselves

during most of the meeting. No questions were asked of the Complainant and ultimately she received a letter advising her that she was not qualified for the class in that department.

That concluded the Complainant's evidence. During her testimony, Respondent's counsel objected several times to the fact that new allegations and statements were being made by the Complainant that had never formed part of the original complaint. They were also not disclosed following the filing of the complaint. With the exception of the comments allegedly made by Mr. Tiley and Mr. Sevier, all of the evidence with respect to the DAC's was new. As well, several of the discussions the Complainant allegedly had with Ms. Hood, Ms. Enright, and Mr. Hathaway regarding Mr. Van Kampen's comments to her were new. Commission counsel was granted an adjournment so that she could make inquiries of the Complainant with respect to this new evidence. It was agreed at the hearing that this new evidence would be admitted subject to the Respondents' rights to make submissions regarding credibility and weight at the conclusion of the hearing.

At the commencement of the next day's hearing, the Complainant asked to be allowed to add to her comments with respect to the decision making process and structure within the College. After some discussion, and, notwithstanding the fact that the Complainant had completed her evidence the previous day, I ruled that she should be allowed to make her comments but cautioned her that it did not give her license to repeat or alter her previous evidence.

The Complainant stated that it was easy for the College of Art to discontinue her classes because the chairs of each department are in charge of that department. They do the hiring and firing and make the decisions to add or eliminate class periods. Once the President and chair of the department have made a decision, that decision is final. Once a decision is made not to offer a contract to a teacher, that teacher becomes "untouchable" by every other department because his/her colleagues fear that they too could lose their jobs. The Complainant stated that she had been teaching at the College for seventeen years in three different departments and until, Mr. Van Kampen's arrival, everyone was happy with her work. It was her opinion that nobody defended her or stood up for her during this process because they were concerned about their own job security. If somebody with her seniority and reputation could be terminated, it could happen to them. That, explained the Complainant, was the power structure at the time that the decision was made not to renew her contract.

The next witness for the Complainant was Mr. Marc Lafreniere. Mr. Lafreniere was a student at the College of Art from 1983 to 1986 and was a student of the Complainant's during the 1986-87 school year. He took three courses from her; namely, Advanced and Beginners Dance and East/West Interface. He witnessed some incidents between the Complainant and Mr. Van Kampen which, in his view, supported the Complainant's allegations. The first occurred in front of the Liberal Arts Office. He was approaching the Complainant and Mr. Van Kampen and he noticed that they were involved in some sort of confrontation. Mr. Van Kampen had his hands on the Complainant's shoulders and she was shrugging him off. Mr. Lafreniere testified that the Complainant looked very disturbed and uncomfortable at the time. He also was present during the East/West Interface class when he observed Mr. Van Kampen standing at the door of the classroom "checking her out" while the Complainant was teaching the class. At one time when the Complainant turned around, Mr. Van Kampen nodded for her to come out into the hall. On other occasions Mr. Lafreniere observed Mr. Van Kampen come into the classroom, stand behind the Complainant's desk and whisper something in her ear. He described Mr. Van Kampen as being in "close proximity, close enough to look like he was being flirtatious." Mr. Lafreniere said that this occurred on at least five occasions and that he had never witnessed a similar interruption in any of his other classes.

In cross-examination Mr. Lafreniere admitted that he had become a friend of the Complainant during the time he was in her class and participated in the special project as well as assisted her in illustrating an educational book with her. He was very disappointed when he heard that her classes were not to be continued and was, in fact, angry. He made reference to a petition that had been circulated on the Complainant's behalf and wrote a letter to the acting President, Mr. Hall-Humpherson, requesting that the Complainant be reinstated. Mr. Lafreniere was shown the petition circulated on the Complainant's behalf and conceded that he had signed the petition three times. He stated that he believed that the pages were circulated separately and that he wanted to make sure that he had signed each page in the event that they were not presented as one document.

The final witness for the Complainant was Ms. Joan Burt. Ms. Burt worked at the College for approximately twenty years, until 1985. At the time she left she was the chair of the Department of Design and had been for about 17 years. It was Ms. Burt's evidence that Mr. Hathaway spoke to her on one occasion about the Complainant. It was in the Fall of 1985, either October or November, and it occurred outside of Mr. Hathaway's office after a meeting that Ms. Burt had attended. They

walked out of his office towards the door in the reception area and he inquired about what Ms. Burt thought about getting rid of the Complainant. Although there were people in the reception area at the time, nobody was near enough to hear Mr. Hathaway's comments. Mr. Hathaway continued by stating that "we don't need any of that sort of thing taught around here" which Ms. Burt took to mean the East Indian aspects of the Complainant's courses. Ms. Burt asked Mr. Hathaway how he intended to do that and advised him that the Complainant would go to the Human Rights Commission if he did attempt to get rid of her. That was the end of the conversation. She then returned to her department and told another faculty member, Mr. Mel Quirt, and Ann Wiganofski, secretary in the Design Department, what Mr. Hathaway had said to her.

Ms. Hood testified that in her view it would have been very unlikely for Mr. Hathaway to have had a meeting with Ms. Burt and to have made the comment he allegedly made. In the Fall of 1985 Mr. Hathaway was not happy with Ms. Burt and knew that it was likely he would have to take some action against her regarding her continued employment. As well, Ms. Burt rarely met with Mr. Hathaway on her own as it was her custom to bring one of her faculty members with her whenever she did meet with him.

EVIDENCE OF THE RESPONDENTS

Mr. Van Kampen is one of the individual Respondents in the complaint. He is presently chair of the C&D Department and has been since 1986. His duties involve responsibilities for budgeting, staffing, curriculum development and student counselling. As well he teaches two periods a week. He takes part in several committees within the College that deal with curriculum and financial matters. He is at present a member of the Council of the College which involves sitting on sub committees such as Finance and Property. He is also very active in marketing at the College and volunteers on a marketing committee which includes fund raising. As well, he continues to service a few clients from his private practice.

The C&D Department is concerned with the education of students in the business of design advertising and illustration. It constitutes about one-third of the College. The first year that the students enter OCA they are enrolled in what is considered a foundation study. That is the year in which students take universal education that applies to the studies they will undertake in the following years. It is in the form of a preparatory year. After a year in foundation studies they apply to

specialized departments like C&D. Because of the demand, the application for placement in the C&D Department exceeds the number of available places and, as a result, the department goes through an interview and selection process to secure the best candidates. Mr. Van Kampen testified that they always receive about twice as many applicants as they can accept. His department is particularly popular because it involves the application of artistic talent in a business oriented manner so that artistic talent is applied in business settings. The C&D Department offers graphic design, illustration and advertising. The students are to develop a sound sense of how their creativity is applicable in a business context. C&D graduates aim for careers in graphic design studios, advertising agencies, art directorships, positions as illustrators, free lance designers, free lance art directors and free lance illustrators. There are a vast array of peripheral applications they are trained for as well. For example, they are prepared to enter TV production, marketing, and product management. They are taught how to operate a business and take many courses to stress marketing principles. The faculty in C&D are practising professionals who operate their own businesses or who are art directors or creative directors in advertising agents or studios. For example, Mr. Van Kampen is a graphic designer. Prior to taking on this position he had done some corporate work concerning package and design. He graduated from the Ontario College of Art and was hired as a junior designer in a prominent design company. He went to the Netherlands for a year and worked as an art director in an advertising agency. When he returned to Canada he went back to the same design company for a period of time. He left that firm to work for a company of industrial designers and graphic designers and worked as a senior package designer until 1972 when he started his own business. His business consists of package design and collateral material including promoting large products in the market place, corporate imagery, brochure design and catalogue design. He operated his business until 1987. During that time he was a member of the Society of Graphic Designers of Canada which is a professional organization that works on behalf of professional members on a national basis. He was President of the Ontario Chapter for four years and President of the National Council for another two years. Their main concerns centred on the standards of the profession. They monitored what was happening in the profession, nationally and internationally, with specific regard to professional contracts and ethics. They also monitored the educational opportunities. Toronto was the principal chapter in Canada and communicated with smaller chapters in various cities. As well, Mr. Van Kampen had some teaching experience. He taught for one winter at York University in a senior class on graphic design. He lectured for a professional organization, conducted a packaging seminar in Chile and lectured on Monday mornings at the OCA. The Monday morning lectures were part of a

series where people from the industry are invited to speak to the students and explain how they operate their business successfully. The Lecturers were intended as role models for the students and students have the opportunity to ask them questions about their profession and their business.

Mr. Van Kampen applied for his position at OCA through an advertisement in Marketing Magazine. The application was sent to Mr. Hathaway, who was President of the College at the time. Mr. Van Kampen testified that he knew Mr. Hathaway as a business acquaintance but denied having any particular relationship with him. In that application he noted that he had observed the "ups and downs of the school and the controversy surrounding educational methods and philosophies." He was referred specifically to what is referred to as the "Ascott Years", being 1971 and 1972. Mr. Van Kampen stated that these years were significant because it was during that time that Mr. Ascott, as the new President, revolutionized the teaching of art. He rejected all traditional methods and invented his own. Mr. Van Kampen described it as an enormous shock to the system. Ultimately it proved to be a "terrible" thing. Although Mr. Ascott was only President for one year, his methods remained at the College and, even to this day, his department is dealing with the consequences of his tenure.

At the same time community colleges were being established which ultimately became substantial rivals to the College. For a period of time many people maintained that students would receive a better education at Sheridan College because of the upheaval at the OCA and the decline that resulted from the Ascott years. There was a general consensus in the business world that students graduating from the C&D Department of the OCA were not as capable as they should have been considering the reputation of the college.

Mr. Van Kampen began to work at the OCA in July of 1986. He started his job two months before the school year to familiarize himself with the curriculum, the faculty and the procedures. Because he was still operating his own business, he worked as many hours as he could, sometimes as many as sixteen a day. He testified that during the summer no interviews were held at the College and that they would have been concluded by late May or, at the most, early June.

Mr. Van Kampen stated that he first met the Complainant in September of 1986 during registration. In July and August Mr. Van Kampen had researched how many classes were offered in the department, the subject matter of those classes, how the subjects related to each other, the classroom

populations, the inventory of courses College wide, and how his department fitted into that system. Ms. Vanderburg worked with him during that summer.

His first observation that there was very little management within the department. He determined that there was no rationale to the overall plan and that courses were not logically populated and placed in a sequence where there could be a system of learning that progressed naturally. Students could choose whatever courses they liked without any interference. The majority of courses taught in the department were studio courses. He described the lecture courses in the department as liberal arts style courses that did not fit the pattern of courses offered through his department. Those were the courses taught by the Complainant, namely, East/West Interface, Information and Eastern Approaches to Art, and Design Information and Costumes Information. The other lecture course in the department was the Monday morning lecture series which was not really a course in that it was taught by volunteers.

By the end of August 1986, Mr. Van Kampen had come to some conclusions about his plan for the future. That plan was reduced to writing and circulated in a memo to all faculty members. Ultimately there were no changes between the draft plan and the final curriculum for the C&D Department. Mr. Van Kampen stated that Mr. Hathaway had no input into his draft or final plan.

Following that memo a faculty meeting was held on October 18, 1986. At the meeting Mr. Van Kampen discussed the distinction between a core course and an elective course. Core courses are mandatory in order to fulfill program requirements. The courses taught by the Complainant were elective. At the time they were designated as "preferred electives." What that meant was that a student in the department would have first choice of a course before somebody outside of the department would be accepted. Mr. Van Kampen advised the faculty that, although there were enough core courses, there was not enough room in those courses. That led to a discussion about classroom population. Mr. Van Kampen's observation was that there was absolutely no even distribution amongst the classes, core or elective. In general, all of the classes were over populated, except for some exceptions. Information East/West Interface, Eastern Approaches to Art and Design and Costume had very low numbers. Those were the courses taught by the Complainant. Because the format of teaching in the C&D Department was predominantly studio, the ideal classroom population would be from 20-25 students. If there were more than 25 people in a studio class

during a 3 hour period, each student could be guaranteed only approximately 5 minutes of individual attention. According to Mr. Van Kampen, design, illustration, drawing or painting cannot be taught properly in that little time. As well, Colleges are accredited by an organization of colleges and universities and, if the class sizes are larger than the recommended limit, the College could be disqualified from granting degrees. Most often the College had more than 25 students in a class because of the demand. On the other hand, in Liberal Arts, the lecture format of the courses, because teaching is not done on a one to one basis, allows for as many as 100 students. In the East/West Interface class there were six students enrolled. In Eastern Approaches to Art and Design there were five students enrolled and in the Costume-Information Course there were only four students enrolled. A review of those two factors raised questions about whether the College was admitting too many students and whether they were admitting the right quality of students.

Another problem arose concerning the issue of electives, specifically with respect to students crossing over into other departments. Mr. Van Kampen was concerned about C&D students electing courses outside of the department which often meant they enrolled in either the wrong course or did not have the qualifications for those courses. As well because there was no personal contact with students outside of the department, a teacher often found himself inundated with students in the second, third and fourth year that they did not know and were not necessarily prepared for the class.

Mr. Van Kampen prepared a schematic outline of the courses as a working document for discussion. It provided an order for the courses so that there was a natural progression from course to course to graduation. For example, the proposal called for six departmental credits per year to qualify to graduate from C&D. The College requirement is that students graduate with 32 credits or 8 credits per year. Six of those 8 had to be core courses and the remaining 2 were to allow for preferences between design and illustration. For example, in the second year, the core courses would include Forms, Basic, Type, Layout, Rendering, Design Illustration. The remaining 2 courses could be systems graphics and advertising concept graphics or illustrated drawing and basic composition. Beyond the core courses students had the choice of preferred options or electives outside of the department. The preferred options for the C&D Department were design or illustration courses. None of those elective courses included the Complainant's courses. According to Mr. Van Kampen's draft, there would be similar requirements for six core courses and two electives each year although the choice broadened with each year. Mr. Van Kampen proposed that the Monday morning lecture

seminar be mandatory in the fourth year if a student had not previously taken it. It was his view that students should have exposure to professionals to discuss their role in business and generally how to manage their own business. Mr. Van Kampen based his draft on the courses actually being offered and attempted to demonstrate that the College could work within the existing structure and systemize it so that a more rationale approach could be taken. His draft was designed to anticipate the knowledge needed by students at graduation so that they would have a chance to be credible future employees. Mr. Van Kampen draft contained the following:

"The department should acknowledge the characteristics and demands of the market place. This implies an awareness of career opportunities, also the periphery of design and illustration, in which the education received at OCA is not only essential but also accepted as being the best. Examples are careers and production management, design, administration, sales and creative services, merchandising management, purchasing of creative services and possibly many others.

If the College considers the above feasible and important, lectures and seminars subjects take on special significance. Proposed subjects are Principles of Marketing, Business Management and Accounting, Patent and Copyright Law, English for Business Communications, The History of Modern Design..."

Mr. Van Kampen explained that there are almost one hundred graduates each year from similar programs and that in order for graduates to secure a place in the industry, they must have a solid education. To do that the College needed to enhance the business skill level of the students so they were employable, something C&D was not doing at the time. In his draft Mr. Van Kampen questioned whether photography was appropriate for C&D because the program being offered was not satisfactory.

Mr. Van Kampen was also concerned with out-of-department students electing C&D courses. At the time the choices of students from other departments was totally arbitrary and at random. It was not unusual to find a fourth year fine arts student in the second year class and a second year fine arts student in the fourth year design. It was an irrational approach resulting in uneven qualifications for the students. He proposed that this approach be discontinued and that students be encouraged to stay within their departments of choice.

Another concern addressed in the draft was class enrolment. Mr. Van Kampen was of the view that they could no longer allow thirty, forty or sixty students in a studio class. If his draft was approved they would have an obligation to provide those core courses. Mr. Van Kampen could not add courses to his curriculum because he had an established inventory he could not exceed. Implementing his draft proposal involved the reassignment of teaching periods. One of his proposals was that the three hour studio courses be reduced to one and one-half hour in length which raised the question of whether they would be able to provide the necessary teaching in that time frame. His proposal also recognized that some of the students might want to take courses in other departments that complemented their interests. That would require the co-operation of the chairs in those other departments. At the time OCA offered the fifth year course which was under-used. Mr. Van Kampen wanted to open discussions as to how they could persuade students to continue for another year where they could undertake independent work and specialize in an area of their choice. Mr. Van Kampen suggested that committees be established to consider the various aspects of his proposal.

When Mr. Van Kampen presented his proposals to the faculty, he received a very positive reaction. No objections were made to any of his suggested changes. In particular, no objections were made to the proposal that the Complainant's courses be discontinued. After that October faculty meeting Mr. Van Kampen followed up with a memo to the faculty thanking them for their attendance and asking for their input. He proposed a deadline for those responses because he had to begin work on his curriculum projections for the next year and had only until the end of the term to do that. He considered the feedback from faculty extremely important. He received written memos from several faculty members in 1986 and early 1987.

Mr. Van Kampen had a meeting with the Complainant and Ms. Vanderburg on October 9, 1986 in his office. During that meeting they discussed the subject of lecture seminars within the department and the relevance of those courses to the department. He discussed with the Complainant inclusion of courses on marketing, business management, business and copyright law, history of graphic design that would be valuable and relevant to the program. He did not ask the Complainant to teach those courses. Ms. Vanderburg left the meeting before its conclusion. Mr. Van Kampen stated that his office was separated from her desk by large plate glass windows but that it was possible to hear what Ms. Vanderburg was saying from her desk because the windows were poor sound barriers. Mr. Van

Kampen denied that he shouted at the Complainant, pounded on his desk or paced up and down waving papers. Neither did he suggest that she should spend more time with him or go away with him. He denied ever making a statement regarding the "taste of other people" or "experience with a brown woman." He denied ever telling her that he could make her do whatever he wanted and that he could see that she lost her job at the College if she did not. He denied telling her that Mr. Hathaway was his best friend or saying that with Mr. Hathaway he could have her dismissed from the College. He denied ever telling the Complainant that she did not need to wear lipstick or making any comments of a sexual nature concerning "the front or the back."

At the meeting they discussed class enrolment. Out of the seventeen students in her classes, eleven were out of department students. That indicated to Mr. Van Kampen the demand for her courses did not come from within the department and it was his view that the department could not continue to provide courses that catered to students from other departments given the pressures within their own department.

Mr. Van Kampen asked the Complainant for a proposal from her as to what she could teach within the department, keeping in mind the financial constraints. Ultimately she did make a proposal to him dated November 21, 1986, containing proposals for three lecture seminar classes. Mr. Van Kampen responded by advising her that her proposals were, in essence, similar to the courses she was already teaching and continued to be more appropriate Liberal Arts courses. Hence, the reference in his memo to the fact that Liberal Arts offered similar courses to those taught by the Complainant. He noted in his memo that Liberal Arts was prepared to introduce academic courses suggested by C&D. He had already spoken with Mr. Arturo Nagel, chair of Liberal Arts, with regard to providing some courses in marketing, advertising, business management, design management and practical English. Mr. Van Kampen never asked Mr. Nagel to include the courses being taught by the Complainant or the new courses she had proposed in her memo of November. Mr. Van Kampen testified that he could not force Mr. Nagel to accept those courses. Neither Mr. Hathaway nor Ms. Hood had that authority. By letter dated December 19, 1986, Mr. Van Kampen responded to the Complainant's previous letter. He advised her that business courses were needed in order to accommodate the students who would graduate from the department so that they were better educated and had an educational background more relevant to their future. He mentioned the qualifications of the faculty

to teach those courses and explained that his plans included experts in a particular field teaching courses in their fields.

He made note of class populations and again noted that there were some classes with 50 to 60 students while there were others with merely 6. He concluded by saying that in his view the Liberal Arts mandate was to look after humanity courses and that the C&D Department would have to rely on Liberal Arts to teach history and other theory. He went on to note that their prime responsibility was to the students and that 60 students in a classroom was an injustice to both student and instructor. He concluded by saying "under the circumstances, I have no choice but to replace your courses with others in an order of priority that alleviates anticipated pressures in 1987 and 1988. Therefore it is my intention to recommend that the curriculum committee and council approve of these changes which will allow us, the department, to offer the courses that it desperately needs." He was referring in that letter to additional courses in the core program which would alleviate the over-population of some classes.

Mr. Van Kampen and the Complainant had a meeting on January 20, 1987. Subsequently a memo was sent to the Complainant in which Mr. Van Kampen repeated his intention not to recommend her courses be approved for the 1987 academic year. He went on to state that it was his view that the courses she had submitted regarding social history did not represent the core courses for C&D and would be more appropriately offered through the Liberal Arts study department.

Mr. Van Kampen testified that he never intended that the Complainant's courses be transferred to the Liberal Arts Department. He never told her that he was going to make that recommendation and, specifically, he never told her that he would make that recommendation so that people would not know that they had a fight.

Mr. Van Kampen did not recall any other meetings with the Complainant. He also denied having regular meetings with the Complainant, either in his office or in the hallways. He denied going to her classroom on Tuesday mornings and asking to speak to her out in the hall. He testified that every Tuesday morning he had an advisory committee meeting which required the attendance of the chairs of all departments. Those meetings lasted all morning and, on Tuesday afternoons, he taught a class from 1:00 P.M. to 4:00 P.M. and again from 4:00 P.M. to 7:00 P.M. Mr. Van Kampen denied ever

standing outside the Complainant's classroom and watching her. He also denied ever whispering in her ear in a classroom, or asking her what she would look like without her shirt, touching her hair, grabbing her from behind or touching her at all. He specifically denied ever sending the Complainant any hand written notes to meet with him or to go away with him.

Mr. Van Kampen was aware that the Complainant's qualifications to teach other courses in the College were being reviewed by DAC's. He did not take part in any of those deliberations. He denied telling anyone on those committees how to assess the Complainant or advising them how to proceed. He denied ever telling anyone on the committees that he wanted to force the Complainant out of the College and denied that there was any conspiracy to that end. He stated that it would have been impossible for him to single-handedly cause the dismissal of a faculty member. There was a very strict process in place which involved the chair making a recommendation in the form of a curriculum objection to the Program and Budget Committee who would scrutinize the financial implications. Eventually it would have to go to the Curriculum Committee, which is a College wide committee that scrutinizes the courses to be mounted for the year to come. If the Curriculum Committee approved the projections, they would proceed to the Council.

As a result of Mr. Van Kampen's suggestions, a design committee, an advertising committee and an illustration committee were formed. Those committees worked on possible curriculum changes and held extensive meetings to discuss those matters. The minutes of the development design meeting of December 4, 1986, indicates that there was discussion on where to start second year courses and at what level. Comments from the advertising committee involved discussions that the class was too print oriented, that there should be more attention paid to television advertising and of the role that video plays in visual communications and developments of photography to the department. Out of those committees were developed curriculum and course suggestions. Mr. Van Kampen attended at several of those committee meetings and at no time were any objections raised to the fact that he was proposing the Complainant's classes be discontinued.

There followed a faculty meeting on January 31, 1987, to discuss the proposals and recommendations from the various committees. Faculty members were provided with an agenda and clarification of the agenda points so that they could prepare in advance. Although the proposed curriculum was

discussed at length, no one objected to the fact that the Complainant's courses were not included for the following academic year.

Mr. Van Kampen's proposals were ultimately submitted to the Program and Budget Review committee and on February 24, 1987, he attended a meeting to discuss those proposals. The curriculum projections were set out in chart form and contained, for 1986 and 1987, the courses being offered by the College. That included the Complainant's courses. In the 1987-88 projection, two of the Complainant's classes were replaced with illustration to basic composition which were core courses. Information/costume for the 1987-88 year was replaced with design to information systems graphics which was a core course. The curriculum projections stated at the bottom "deleted through cancellation of periods, Council decision". That was a reference to the instructions by the Council that expenditures of the College would have to be cut by 3%. The asterisk in the proposal indicated that every department would have to participate in reducing its classes in order to achieve the budgetary limitations. The actual period class reductions involved two courses for the C&D department. That directive was found in the minutes of the Council meeting of September 29, 1986. As a result of that directive, Design 2, a production art course taught by Mr. Eric Green, was not offered and Mr. Gerald Brown's courses were reduced. The curriculum projections for the Liberal Arts Department were also reviewed at that meeting and, although Mr. Nagel and Mr. Hathaway were both at that meeting, Mr. Van Kampen denied telling either of them how to vote. During the discussion of the proposals, Mr. Dagenais, acting as president of the Faculty Association, requested that the minutes record his questions regarding the discontinuation of the Complainant's courses. Mr. Van Kampen explained that they were not relevant to the curriculum. Mr. Dagenais then inquired as to whether the Complainant would be assigned other courses in C&D. Mr. Van Kampen responded in the negative.

Following those discussions a Motion was past that the curriculum projections be approved. The projections then were forwarded to the Curriculum Committee. Mr. Van Kampen attended that meeting on March 5, 1987. They were approved. Mr. Van Kampen denied telling anyone how to vote at that meeting. He stated that there was much discussion about his projections. He described the Curriculum Committee as the forum where one has an opportunity to take note of what is happening in the College generally and to see whether everyone is working within the limitations prescribed. If anyone were attempting to sneak an extra course in, it would be at that stage it would

be noticed. At that meeting Mr. Dagenais again wanted verification that the Complainant's courses were being discontinued. Mr. Van Kampen gave the same response he had at the previous committee meeting and added that the three courses were traditionally low in enrolment.

After the projections were approved by the Curriculum Committee, they were forwarded to Council on March 16th, 1987. At that meeting the projections were again approved. Mr. Van Kampen stated that vigorous discussions occurred concerning the proposals, the necessity for change and the effect it would have on staff and students. Information was scrutinized closely. At that Council meeting an inquiry from Mr. Tiley was made regarding the decision not to offer the Complainant's courses in 1987/88. He also asked whether the instructor would be teaching other courses within the College. The response to both of those questions was no.

In reviewing the approved curriculum, Mr. Van Kampen noted that the courses offered by the Complainant were elective courses and had been withdrawn from the curriculum. As well, the courses taught by Mr. Green and Mr. Brown that were discontinued were electives. Two core courses (design and typography) were deleted from the programs as were airbrush cartooning and water colour and expressive illustration. The instructors of those courses were senior members of the faculty. Nevertheless, when their courses were no longer offered, their employment with the College ended.

Mr. Van Kampen explained that the present economic climate at the College is disastrous. There is such a shortfall in government funding that over the years many activities have taken place to try to cope with new ways of surviving with the economic restraints. At the present time, Mr. Van Kampen stated, there was a major committee superimposed over the College by the government to see how the College could survive in the future with the financial resources required to keep it in the format it is presently in and renowned for. The biggest expenditure of the College is salaries and so, once the capital budget has been pared to the basics, any savings to be found must come from the human resource budget. As a result, the department chairs feel more pressure to consolidate liberal arts subjects into departments that have some liberal art topics within them. There is huge pressure to do away with any duplication. All aspects of the College are being vigorously looked at with a view to eliminating waste. Elective courses that are peripheral to the program are the first to feel the effects. The core program must survive in order to provide the education necessary. If the peripheral courses

are eliminated, the core can survive, although in a significantly reduced manner. The College is dealing with these budget restraints by consolidation, concentration and rationalization. That is the kind of analysis Mr. Van Kampen brought to C&D when he began in 1986. That analysis resulted in proposals that were ultimately approved by the Council and resulted in the decision not to offer the Complainant's courses for the following academic year.

During the time involved in this complaint, there were a negotiations between the Faculty Association and the College that resulted in a Memorandum of Agreement that was subsequently amended by Arbitrator Teplitsky. As a result of that memorandum, it was agreed that Departmental Appointments Committees (DAC's) would be formed which would operate as a peer review committee. The committees were comprised of faculty members and students. If a faculty member was advised that his or her courses were to be discontinued, that faculty member could submit proposals to teach other classes taught by less senior faculty members. That applicant would be interviewed by the DAC. Their credentials would be reviewed and a decision would be made as to whether the applicant was qualified to teach other courses. If the applicant had more seniority and was found to be capable of teaching another course taught by a more junior faculty member, he or she could then bump into that position. The DACs had not been set up at the time of the decision to discontinue the Complainant's courses. However, the Faculty Association and the College agreed that the Complainant could take advantage of the new structure and allowed her to make application to the DACs of the various departments for an assessment. Those assessments took place in 1987 and 1988.

Mr. James Tiley was a member of the DAC in Experimental Arts. He is presently teaching a studio painting and lecture seminar course in Foundation Studies. He was chair of the Experimental Arts Department and taught studio and seminar courses relating to contemporary art and modernist art history. He is a practising artist primarily working in acrylics. The Experimental Arts Department was different from other departments in that it taught many areas of contemporary concern including video, laser, holography, photography, sculpture painting, painting and drawing. The qualifications required were that faculty members be active and well established, significant artists in their fields. He attended both assessments of the Complainant, one in the Fall of 1987 and another in the spring of 1988.

The first assessment was held on September 1, 1987, and lasted approximately one hour. The committee assessed the material provided by the Complainant including books, photos, fabrics and slides. In a report dated that same date to Mr. Hathaway, Mr. Tiley stated the following:

The Departmental Appointments Committee spent over one hour assessing the above material and listening to Ms. Majumder's explanation of the books, photos, fabrics and slides. Their unanimous conclusion was that Ms. Majumder's areas of interest and professional expertise have little relevance to the experimental arts program or its aim and that Ms. Majumder lacks the desired professional stature as a practising artist in the context of contemporary Canadian art to be considered either qualified for, or capable of, teaching within our program...

The experimental arts (DAC) noted that Ms. Majumder's areas of expertise and professional experience coupled in the areas of publishing and, most especially, within a specialized, restricted area of ethnic studies relating to East Indian Dance, Costume and Graphic Arts.

The committee were also aware of Ms. Majumder's years of teaching involvement in other departments of the College, such as liberal studies, fine arts and communication and design where her specialized skills and expertise might be regarded in having greater relevance. It was also noted that Ms. Majumder's native language is Urdu and that her English is sometimes very hard to understand--therefore, we rate her communication skills below those we would usually demand of our own faculty and which we regard as the most basic and essential attribute of an effective teacher.

It was Mr. Tiley's evidence that the Complainant was given as much time as she requested to present her material and that she was not interrupted during her presentation, except perhaps to answer specific questions related to the material.

Another assessment was held by this DAC on April 26, 1988. At that time there was an elected DAC in place, unlike the first assessment which was convened on an emergency basis. Because of concerns of a conflict of interest, some members of the elected DAC did not participate in the assessment because they taught some of the courses the Complainant had indicated she could teach. Mr. Tiley denied ever stating to the Complainant that "he did not know why Mr. Van Kampen was doing this to her." The Complainant's presentation took approximately 45-50 minutes, after which the Committee withdrew to discuss her work and assess her qualifications and ability to teach the two painting courses that she had listed. In a memo dated May 9, 1988, Mr. Tiley advised Mr. David Hall-Humpherson, who was President of the College at the time, advising him that the committee had met, described the documentary materials used in the presentation, set out the format of the review as well as the criteria for the review and concluded that it was the unanimous decision of the committee that the Complainant did not satisfy the criteria necessary to teach in the Experimental

Arts. According to the committee's assessment, the Complainant was not a prominent practising artist within her field and had failed to establish any professional stature by means of a record of exhibitions, awards, catalogues, etc. The assessment committee concluded that the Complainant had failed to provide sufficient evidence of her creative/teaching capabilities, that the presentation lacked the necessary evidence of her understanding of the critical and historical issues associated with contemporary painting and that her strengths were in areas other than studio painting courses. Those conclusions resulted in an unanimous decision that the Complainant was not qualified nor able to teach the two painting courses that she had listed. Mr. Tiley denied that he had ever been told by Mr. Van Kampen or anyone else how to vote. Neither had any of his committee members.

Mr. Gerald Sevier teaches illustration design in the C&D department. He has worked at the College, for thirty years, all of the time in that department. As well, he has a private practice as an illustrator. He was present at the initial meeting in October of 1987 to discuss the proposed changes to the department. He stated that the department felt that restructuring was necessary given that the previous chair had done nothing to change or improve the department. He was the chair of the DAC for C&D. A meeting was held on May 10, 1988, by the four members of the committee to assess the Complainant's capability to teach two courses, Illustration II, Observation Drawing, and Illustration II, Basic Composition.

Minutes of the meeting were taken by Linda Sanborn who was the elected student representative on the committee. Those minutes indicate that the Complainant presented some 34 slides, several textile designs and 8 books for their consideration. It was the observations of the committee that the Complainant's presentation was amateurish and disorganized. Further, it was not relevant to the C&D concerns generally or to the specific courses she claimed she could teach in the department. The committee found that the Complainant showed little comprehension of North American illustration and advertising procedures and felt it was doubtful that students would be able to find work based on the courses taught by the Complainant. It was ultimately the unanimous conclusion of the committee that the Complainant was neither qualified or capable of teaching the two courses she had listed. Mr. Sevier denied saying to the Complainant, "I know what to do because Jan Van Kampen instructed us what to do." He also denied the allegation that the committee laughed and joked during the assessment. He testified that the committee asked numerous questions and reviewed all of the material. He denied that Mr. Davies, one of the committee members, left the assessment

before it was concluded. He did not hear the Complainant ask Mr. Davies why he had not asked any questions, nor did he hear the alleged response "Jan Van Kampen has told us what to do." Mr. Sevier testified that the members of the committee were all professional people and the student representative was a highly rated honour student. It was a well rounded committee representing design, illustration, typography and magazine art.

Mr. Arturo Nagel has worked at the College of Art since 1978, in Liberal Arts Studies and Foundation Studies. At present he is teaching 20th Century Survey, a rotation of half credit courses on 20th century art. In the past he has taught drawing and media in Foundation Studies. He described media as a practical course on drawing and painting techniques. He is a practising artist as well. For 1982-83, he was the acting coordinator of the General Studies program and from 1983 to 1985 he was acting chair of Liberal Arts Studies. From 1985 to 1988 he was chair of that department. He described the Department of Liberal Arts Studies as the academic arm of the College. It provides the students at the College with courses in art history, design history, writing, creative writing, basic writing, literature and psychology. As well, it provided courses in psychoanalysis, philosophy, theatre art, anthropology and women studies. It differs from the other departments of the College because its mandate is to provide the students with university level academic courses rather than practical or hands-on courses. The Complainant taught two courses in the Liberal Arts Department, Beginners and Advanced Dance. The only other non academic course taught in that department was Visual Artist and the Stage taught by Mr. Murray Lawfers. Over the years Mr. Nagel had seen a slow but steady erosion of teaching periods at the College, beginning in 1987-88 academic year when the College suffered its 3% reduction, or the equivalent of 16.5 class periods. Following the Council's directive to effect that 3% reduction, Mr. Nagel proposed that the Complainant's courses be discontinued. As well, he recommended that the course taught by Mr. Lawfers be discontinued. It was his view that all three courses were anomalous in that they did not fit into the mandate to offer the students academic courses. They were all studio based courses as opposed to lecture courses. As well, the courses taught by the Complainant had a history of under-enrolment. Another consideration in his decision was the fact that the courses taught by the Complainant and Mr. Lawfers were not core courses within the curriculum. The decision to discontinue those courses was made by Mr. Nagel and he denied that he was directed to do so by Mr. Van Kampen, Mr. Hathaway or Ms. Hood. There was, within the department, a curriculum planning committee made up of elected members of the department who met on a regular basis to discuss

curriculum projections. The mandate of that committee was to review any curriculum problems, in the short term and the long term, with a view to the development of the curriculum over a four or five year future period. The committee was composed of four members plus the chair. The consensus of that committee was that the courses he proposed to discontinue were anomalous in the overall curriculum and that they be discontinued. Later he called a meeting of the entire department during which that decision was communicated. That meeting took place in March of 1987. Ultimately the vote was 13 in favour, 1 opposed and 3 abstentions. After approval at the internal committee level, the proposals were advanced to the Program and Budget Review committee, during which there was much discussion regarding his proposal. Mr. Dagenais asked why the courses were being discontinued and Mr. Nagel explained that the courses did not have the support of the program areas of the College, had a history of under-enrolment and were anomalous to the mandate of the Liberal Art Studies to offer academic programs. When Mr. Nagel was asked whether the faculty member would be assigned other courses in Liberal Arts Studies, his response was "no." His curriculum projections were approved by the Program and Budget Review committee. Subsequently, a meeting of the Curriculum Committee was held in March of 1987, during which, once again, there was discussion regarding his proposals. Mr. Dagenais again queried the rationale for the discontinuation of the courses and inquired as to whether the faculty member would be assigned to teach other courses within the department. The answer again was "no." The curriculum projections were passed at that committee level. Mr. Nagel testified that the Curriculum committee consists of about 40 members, one-half of whom were faculty. It also included members from the Governing Council and students. He described it as a fractious committee, especially because the student votes were very important. They represented one-half the votes of the committee and, if the students were opposed to a proposal, they could exercise their right to defeat a motion. Finally his curriculum projections were forwarded to the Council meeting in March of 1987. At that meeting Mr. Tiley raised the same questions previously asked by Mr. Dagenais and received the same answers. The curriculum projections were approved at the Council level. Subsequently, a letter was sent to the Complainant advising her that her courses were to be discontinued. Upon receiving the letter, the Complainant telephoned Mr. Nagel at home. Mr. Nagel stated she was very tense and angry. He subsequently had a meeting with her at her request. Mr. Nagel denied ever stating to her during the telephone conversations or the subsequent meeting that he had been pressured by Mr. Hathaway to discontinue her courses.

Mr. Nagel testified that he had never been asked to transfer courses taught by the Complainant from C&D department to his department. He stated that it would be difficult to do so because there was a finite number of periods allocated to each program. If a department were to transfer courses from its program to another, it would leave that department short two or three periods and would put the other department in a position of being over the same number of class periods. He personally had no knowledge of courses being transferred in the past, although he did recall that occasionally a department would loan a small piece of their time slot to another. In particular, he had a faculty member who was cross-appointed with photo electric art and his department received a loan of .5 or .75 of a class period. A transfer of courses, in any event, would require the approval of the Program and Budget Review committee, the Curriculum Committee, and the Council. Mr. Nagel testified that he could not have been forced to transfer or accept courses against his will and denied that he had ever been asked by Ms. Hood to transfer the courses taught by the Complainant to his department.

Mr. Nagel participated in two assessments of the Complainant, one in 1987 and another in May of 1988. Mr. Nagel prepared a summary of the first assessment for Mr. Hathaway dated July 13, 1987. Because the DACs had not been formally elected, Mr. Nagel prepared an assessment based on the Complainant's qualifications in relation to the courses she had specifically designated she was capable of teaching. The Complainant did not appear before the committee or Mr. Nagel. He prepared a list of the minimum requirements of the courses designated by the Complainant based on past job postings and course outlines. Specifically, the Complainant had listed History of Communication Design. The minimum academic qualifications for the course were a MA degree in the field and/or equivalent experience and a minimum of two years teaching experience at the university level. The Complainant's curriculum vitae did not indicate either the interest nor the academic qualifications to enable her to teach that course.

Another course designated by the Complainant was a World of Music: An Introduction. The minimum academic qualifications included an MA in music and a minimum of two years teaching experience in music history at a university level. Exceptional ability as a performer would be considered a desirable qualification. The academic qualifications for the Art of Sound: An Introduction to Western Music, were the same. Mr. Nagel concluded that the Complainant's qualification were inappropriate to those courses. Her BA and MA were in Bengali. Her course

work towards her MA was in sociology, religion, statistics and research methodology, none of which were relevant to the courses she had applied to teach. The next course, a History of Costume, required a minimum qualification of a MA degree and/or equivalent professional experience and a minimum of two years teaching at the university level. Mr. Nagel found no evidence in the Complainant's curriculum vitae that she had extensive knowledge of costume design and had no experience in the history of costume design/theatre arts. The minimum requirements for the course Basic Writing and Communication were a MA degree in English and a minimum of two years teaching experience in English and/or writing at the university level. A record of published work was considered desirable. Again, Mr. Nagel concluded that the Complainant's degrees were inappropriate and not relevant to the course. Similar comments were made with respect to the courses Women and Art, Contemporary Canadian Art and Survey of Western Art. In conclusion, Mr. Nagel stated that the minimum qualifications to teach in Liberal Arts were consistent from one course to another, that is a masters degree and/or equivalent professional experience. While the Complainant had taught courses in East Indian dance, she had not taught academic courses. He questioned the equivalency of the Complainant's degrees to a degree of a Canadian university and stated that he was unable to recommend that she teach any of the above-mentioned courses.

The second assessment of the Complainant took place on May 10, 1988, between the hours of 10 A.M. and 1:15 P.M. By that time the formal DAC was in place and the members had been elected from within the department. Its membership included one student member. Two of the elected members, however, did not sit on the committee meeting because they both taught courses that had been selected by the Complainant. Mr. Nagel felt that would have created a clear conflict and asked two department members to stand in their stead. Prior to the meeting the committee had received a letter from the Complainant setting out the courses she was proposing and an appendix containing material of her work. Each member of the committee received and reviewed that letter and appendix before their deliberations. In reviewing those documents the committee was surprised to find factual errors. For example, the Complainant stated that the course, Survey of Western Art, focused primarily on the period between the 1890's and the late 1930's, including art nouveau, art deco and impressionism. The committee noted that the eight impressionistic exhibitions were in the 1870's and 1880's and were surprised to find such factual errors in her written submission. Before the assessment began the committee explained the format of each course so that the Complainant would understand how many students would be in each course and whether they would be in a large lecture hall or

seated informally around a table. Mr. Nagel stated that the committee put no time limits on the assessment but allowed the Complainant as much time as she felt was necessary for her presentation. He denied cutting the Complainant off during her presentation but did ask her to address herself to the members' questions at some point during the interview because she had a tendency to wander off topic and the committee members had prepared specific questions they wanted addressed. He also denied telling her that it was "a done deal" or that committee members paced during the assessment and did not ask any questions. He denied a committee member saying "I don't see why we have to go through this again, you have been dropped, your courses have been dropped." He denied the allegation that he or any member of the committee humiliated or insulted the Complainant during her presentation. He stated that they treated her with respect, listened to everything she had to say and seriously deliberated on her presentation afterwards. They took copious notes during the assessment and concluded that she was not qualified or capable of teaching the courses she had listed. He wrote the report of the committee and circulated it to the committee members for their approval.

Mr. Paul Baker was a member of the Liberal Arts Studies DAC that assessed the Complainant's capability to teach courses in that department. He has worked for fourteen years in Liberal Arts Studies and is presently teaching Introduction to Theatre, Writing and Communication and Canadian literature. He has a Ph.D in English from the University of Toronto and has published extensively, including a full length study of D.H. Lawrence. He also has published articles on opera and music. He has been the chair of the Liberal Arts Studies Department since the Fall of 1989. He testified that as a member of the DAC, he received the Complainant's letter and attachments prior to the meeting and reviewed them before the committee met for the interview. He denied pacing up and down during the interview and denied complaining that he did not understand why they had to go through the process because her courses had been dropped. He also denied the allegation that Mr. Nagel dictated to the Complainant how to make her presentation and stated that they gave her enough time to present all the material and to make whatever submissions she chose on each course. The only time Mr. Nagel intervened was when the Complainant was off subject and lost focus of the topic. He would remind her of the question and attempt to prompt a response. He agreed that it was the unanimous decision of the committee that the Complainant was not qualified to nor capable of teaching the courses she had listed.

Mr. William Davies was also a member of the DAC for Liberal Arts Studies. He is presently retired from the College, but worked there for seventeen years. He taught Costume and several Illustration and Light drawing courses in the C&D department. He has also had private employment in advertising doing lettering, design and illustration. He presently maintains his own studio in Yorkville. He described his work history as being typical of the faculty in C&D. The faculty were not teachers by definition but professionals functioning in a business world. He denied, as a member of the DAC, joking and laughing at the Complainant during the assessment interview. He denied hearing anyone comment on the fact that the committee knew what to do because Mr. Van Kampen had given them instructions. To his knowledge no one ever told the committee members how to conduct the assessment or what conclusions they should reach. He specifically denied leaving the assessment before the Complainant had concluded her presentation.

Mr. Robert Begley is the current executive director of the Northern Ontario Art Institute. He has been seconded from the College where he holds the position of Director of Planning and Policy Development. He has been with the College for fourteen years. For ten of those years he was the Registrar/Bursar, from 1980 through to late 1989. As the Registrar/Bursar he was responsible for the registration of students and the maintenance of their records. He also was responsible for enrolment and the audits required by the government respecting the students. As Bursar he supervised the collection of student fees and the assessment of fees, the audit of monies collected, the projection of revenue with those fees, made recommendations to the appropriate committees on fee levels and worked as auditor on the annual audit for the College. He was also the administrator responsible for evening and summer programs and supervised graduation and worked with the President and Academic Co-ordinator in the development of curriculum and academic policy. As Registrar, he received complaints about sexual harassment involving faculty members but never involving Mr. Van Kampen. The Complainant specifically never spoke to him about Mr. Van Kampen.

Mr. Begley was made aware of concerns regarding Joan Burt and was involved in the steps leading to her suspension and termination. In the spring of 1985 he had discussions with Mr. Hathaway regarding complaints they had received. They considered the complaints and the documentation, did research into those allegations and participated in a special tribunal set up by the Council to deal with those complaints. There were a number of meetings held from the spring of 1985 through until

December when she was suspended. The majority of those meetings were done outside of the College because of the seriousness of the situation. They were unsure as to whether they should suspend Ms. Burt and if they did, how it would affect the reputation of the College. They received complaints from students about the level of their evaluations, about the fact that they had received marks that were eventually recorded as failures, having to repeat courses and having to take summer courses to complete their program requirements. There were complaints concerning faculty not appearing in classrooms and about the lack of clear definition of projects. There were also complaints regarding the conduct of Ms. Burt. She accused students of not completing the program, belittling them, denying agreements had been made with them. The departmental files of the investigation were placed in Mr. Begley's office because it was the most secure office in the College. In January of 1986 Council had called for the establishment of a tribunal to review all of the allegations. They requested students submit letters of appeal to that group. The group consisted of the Academic Co-ordinator, Mr. Begley or his designate, the Senior Advisor and the new chair of her department. There was also one student from Admissions and Academic Standards. They heard several appeals concerning evaluations, failures, wrongful registration, repetition of courses and wrongful methods of evaluation. The students alleged that the methods of evaluation were inconsistent and unfair. In many instances relief was granted. Each case was considered individually and some students were granted withdrawals from failures so that their transcripts would not indicate that they had failed a course, some grades were raised and some students were granted compensation for registration and summer courses, that is their tuition was returned to them. Special consideration was given to a number of students to allow them to graduate. There was a 41-page document prepared entitled "Allegations against Joan Burt." Mr. Begley assisted in compiling that list of allegations. Most of them were made by students. Ultimately Ms. Burt's employment was terminated in 1986.

Mr. Begley worked at the College during the summer of 1986. It was his evidence that interviews for students had been completed by May or, at the very latest, early June and that, except for the chairs of the departments, faculty teaching summer school and administrative staff, it was unusual to see any faculty members at the College during the summer. He did not recall seeing the Complainant there at all during the summer of 1986. He did, however, meet Mr. Van Kampen during that summer and had several discussions with him throughout that time. Mr. Van Kampen wanted to review the enrolments in the courses and his curriculum. He also wanted to review the students and see how changes in the curriculum would affect the students' program requirements. One of the mandates Mr. Van Kampen was given on his appointment was to revamp the curriculum within the department and

he was attempting to amass all of this background information before preparing a final plan. By the end of the summer, before classes started, Mr. Van Kampen had formulated a proposal for curriculum changes in his department. Ultimately that was the proposal he presented to his faculty. The courses taught by the Complainant were not included in that proposal. Mr. Van Kampen told Mr. Begley that those courses had a history of low enrolment, they were not part of the core program and that the majority of the students registered in those courses were not C&D students but out of department transfers. Mr. Van Kampen had a number of problem areas within his department with high enrolment and his plan was to shuffle courses to intensify the quality of his program and to alleviate the pressure. He attended the October 18, 1986, faculty meeting wherein Mr. Van Kampen's proposal was presented to the department. Generally the reaction to the proposal was extremely positive. The meeting lasted all day and during lunch many of the faculty wanted to continue with the discussion because they were interested in the changes Mr. Van Kampen had envisioned. They felt it would improve the quality and professional nature of the program, something that had been needed for a long time. There were no objections to his proposals to eliminate the courses taught by the Complainant.

Mr. Begley stated that no chair alone or in concert with other chairs would have the authority to, on their own initiative, discontinue a course. The process began with the Academic Co-ordinator sending out a request to each chair indicating the guidelines, the period allocation, the proposed sabbaticals or retirements and asking the chair for a proposal based on those guidelines. The chair, in consultation with the faculty, would prepare a proposal that would be submitted to the President, the Academic Co-ordinator and Mr. Begley. He would review the proposals with the chair and the academic co-ordinator, specifically looking at the cost of any changes proposed. They considered other ways of making savings and considered how the proposed changes would affect the calendar copy or publications of the College. There would be a number of discussions between the three before the proposal was finalized. It then went to the Program and Budget Review committee, to the Curriculum committee and, finally, to the Council for approval. The process usually began in mid October and ended in mid December. For the academic year in issue, it was delayed because of the academic task force that was expected to make its report in December. As a result, the entire process was delayed until early February. The academic task force was a review committee set up by the Council to look at reducing costs. It consisted of the Academic Co-ordinator, the chair of the Curriculum committee and the chair of the Academic Appointments and Tenure Committee. The

College was in a budget deficit and Council felt that it needed to be brought back into a balanced state. A task force was set up to recommend how they could do that. The task force presented the results of their study to the Council in December of 1986. The Academic Co-ordinator and the President did receive some submissions, but very few. Experimental Arts proposed the New York campus be closed while Fine Arts proposed maintaining their Florence campus. Those were two major areas that had been considered as expendable. According to Mr. Begley the reaction was very negative. In fact he said that there almost a riot in Council chamber. As a result Council did not approve the recommendations of the task force but instructed the chairs, faculty and students to make adjustments by the end of January to eliminate \$100,000.00 from the budget. On February 2nd there was a meeting of Council and the chair of the Finance committee officially recommended that \$100,000.00 be cut from the budget. It was agreed to make that budget reduction across the board within all departments and there was an approved list of periods per department that were to be declared redundant. The chair of the Finance committee was an external government appointee.

The department of Liberal Arts had presented its curriculum projection to Mr. Hathaway dated February 2, 1987. Attached to it were charts setting out the courses being offered within the department. The projection indicated that for the 1987-88 year two courses taught by the Complainant were to be offered. Following Council's decision of the same day, another projection from Liberal Arts did not contain the two classes taught by the Complainant. Some time after February 18, 1987, Mr. Hathaway received a proposal from C&D in which the Complainant's three courses were deleted. They were replaced by a second year core course. Similarly, they received a projection from Fine Arts from Mr. Miezajs dated February 18, 1987, which did not contain the course offered by the Complainant. Mr. Begley attended at meetings with Mr. Van Kampen, Mr. Nagel and Mr. Miezajs with regard to the department's curriculum projections. They explained that they had decided not to offer the Complainant's courses because of low enrolment, the fact that they were not core courses and the fact that the majority of students in them were not students of that department. The proposals then went to the Program and Budget Review committee, the Curriculum committee and Council, where they were ultimately approved. Mr. Begley noted that Mr. Dagenais, at both the Budget and Review committee meeting and the Curriculum meeting, questioned the rationale for deleting the Complainant's courses and questioned whether she would be offered other courses within the College. Mr. Begley described Mr. Dagenais as a very conscientious Faculty Association President who tried hard to work with the College in carrying out the faculty agreement.

He was absolutely not the type of President who would side with management. He always challenged the College and required the College to justify their actions rather than just rubber stamping their decision.

Mr. Begley testified that it was not unusual to advise a faculty member that their courses were not to be offered during the next academic term or year before approval from the various committee levels. There was an informal agreement with the Faculty Association that was an appropriate way to handle things so as to give people sufficient notice to make alternative plans for their future. On occasion the decision to delete the course from the curriculum was either not approved or faculty members were offered teaching positions in other courses.

Mr. David Hall-Humpherson graduated from the College in 1947. He became an instructor in 1951 and worked there until 1991 when he retired. He was there during the Ascott period of 1970 - 1972. He identified an advertisement that was placed in the Globe and Mail in July of 1971, advertising for a senior tutor in the Cultural Probe faculty. As well as asking for a broad disciplinary background and special interests in areas of comparative literature, sociology, anthropology, biology, behavioural psychology, parapsychology and utopian thought, the advertisement went on to say "to develop a core program to mutual probe past and present cultures and speculate on future possibilities, to act as gad flies, irritants, and prods in an art community. Must be interested in exploring interaction between traditional field of study." Mr. Hall-Humpherson described the Ascott period as one of turmoil. Mr. Ascott changed the format of the introductory years and made the foundation year into a two-year course. He changed the names of courses completely with the result that some of them were very difficult for people to understand without considerable explanation. As well, departments became sectors or areas with names quite different and everybody became very disoriented. Mr. Hall-Humpherson taught in the departments of Foundation Studies, Interior Design and Industrial Design and for several years was the assistant to the chair of Foundation Studies. From 1985 to 1986 he was the acting chair of C&D and, in 1986, was appointed as the first Academic Co-ordinator, a position he held until 1988 when he became President of the College. He also had professional experience in graphic design, in organizations that produced designs and products. Packaging and poster design, brochures and booklets were all part of his field. For the entire time he worked at the College he continued in his external professional activities.

Mr. Van Kampen took over as chair of the department after Mr. Hall-Humpherson. They had several discussions regarding the responsibilities of department chairs generally and regarding specific programs. They discussed some problem areas, particularly the problem of over crowding and the fact that students had difficulty enrolling in the necessary courses because of over crowding. Mr. Hall-Humpherson testified that he never instructed Mr. Van Kampen to eliminate the courses taught by the Complainant and that he became aware of the fact that the chairs of C&D, Liberal Arts and Fine Arts were proposing that her courses be discontinued by way of memo. He met with Mr. Hathaway and the Complainant in February of 1988 to discuss the College's settlement offer. At that meeting it was proposed that assessment committees be established to review the ability and qualifications of the Complainant to instruct courses currently being taught by other faculty members with less seniority. Failing that, the College was prepared to offer her a severance package. The Complainant accepted neither. Mr. Hall-Humpherson denied that anyone at that meeting told the Complainant to be quiet and to say nothing. He also denied the allegation that Mr. Hathaway told her that no one wanted her, neither he nor the department heads. No resignation letter was offered to the Complainant and she was not instructed to sign any resignation. Mr. Hathaway conducted the meeting with courtesy and consideration and did not get angry and pound his fist on the desk. Mr. Hall-Humpherson specifically remembered that he was concerned that the issue be handled with dignity and was satisfied that it was done in that manner. He denied hearing Mr. Hathaway tell the Complainant that if she did not resign he would humiliate her. He also denied hearing Mr. Hathaway tell the Complainant that he would make the assessment process a nightmare for her and that she would "never make it" and that "he would ensure that she would never come back to the College." Mr. Hall-Humpherson testified that it was never suggested to him that the courses taught by the Complainant in C&D be transferred to Liberal Arts nor did he ever make such a suggestion.

Michele White has worked at the College of Art since 1982. She has, over the years, taught in various departments including Foundation Studies, Fine Arts and Experimental Arts. During the academic year 1986/87 she taught in Foundation Studies and Fine Arts. At the time of the hearing she was employed by the Ministry of Education on the Ontario College and University Association's restructuring team for the Ontario College of Art. During her tenure she has also been a member of the governing Council, the Curriculum Committee, Program and Budget Review Committee, Academic Appointments and Tenure Committee and various others. She was a member of the Equity Task Force on the Status of Women for 1985-90 and was a member of the Harassment Committee

which developed a policy on sexual harassment. As chief advisor on student policy at the College she was the academic counsellor for students and provided harassment and complaints counselling. Her responsibilities included all aspects of student life at the College. During that time she received complaints from students and staff members. She never received a complaint about Mr. Van Kampen nor did she receive any complaint from the Complainant. As a member of the various committees, Ms. White had frequent occasion to get to know Mr. Van Kampen. She testified that she had never heard him make any remarks of a sexual nature, never seen him placing his hands on staff or students or seen him attending other teachers' classes.

In the summer of 1986, when the allegations arose, Ms. White, as senior advisor, was involved with the student interviews. Those interviews took place between February and the end of May, although they might have spilled over into the beginning of June. She also participated in the registration of the students. She recalled that the Complainant did work during registration week in 1986, but had no recollection of her being in attendance at the College during the summer months. In her view it would be unusual for instructors or teachers to be in the College during the months of July and August.

Ms. White attended at a meeting on December 5, 1986, of the Council of the OCA. Although she was not a member of the Council at the time, she attended the meeting because of the direction of the Council to reduce the budget. One of the recommendations was that the off campus programs be cancelled. The Council had appointed a group of three people to effect the cost savings required and those recommendations were to be presented at that December 15th meeting. According to Ms. White, there was considerable discussion about the elimination of the off-campus program. Since the majority of Council members were not in favour of eliminating those off campus programs, it was understood that a 3% across the board cut would be necessary in order to develop a curriculum within the College's budget. At first they tried to save money out of the furniture and equipment budget and in any other budget except the academic budget. However, it became clear that those savings would not achieve the necessary result and the Council members were directed to make cuts from the courses. In order to do so, the task force looked at the curriculum and the program in total and then looked at each course individually, including enrolment and content of each course. They also considered the relevance of the course to the program and determined whether there was any overlap in the programs being offered. Another factor they considered was whether courses were

considered core or elective and whether they were studio or lecture courses. They also considered seniority. Their conclusion was the lecture/seminar courses should be eliminated because the College was a studio arts program. That involved the Complainant's course in the Department of Fine Arts. As well as one other life drawing class that traditionally had low enrolment. It was recommended that those two classes be eliminated for the next calendar year.

Ms. White was a member of the Peer Advisory Committee which was composed of faculty members from all departments. Mr. Miezajski was the chair of Fine Arts at the time and was a member of that committee. It was essentially an ad hoc group and all decisions were consensual. Ms. White's evidence is that, as members of that committee, they felt free to disagree with the chair when necessary. It was the unanimous conclusion of the five members of that committee that the course taught by the Complainant and the life drawing class not be offered for the next academic year. At no time in the deliberations of that committee did either Mr. Van Kampen or Mr. Hathaway's name arise and they were not part of the decision making process. The letter from Mr. Miezajski to the Complainant advising her of their intention was approved by the Committee. Ms. White explained that the chair of each department presented their curriculum to the Program and Budget Review Committee and to the Curriculum Committee. Those committees would decide what curriculum to forward to the Council for approval. No chair of a department could, on their own initiative, determine what courses would be deleted or added to the program without the approval of those two committees and Council.

Ms. White was a member of the Program and Budget Review Committee in February of 1987 when Mr. Miezajski's recommendations were reviewed. As such she attended at the meetings where the curriculum projections for the Fine Arts Department were considered. There was considerable discussion about those recommendations. The Fine Arts Department objected to the cuts and fought them at the time. When the vote was taken, Mr. Miezajski and Ms. White both opposed the cuts to the Fine Arts curriculum, but the Motion passed anyway. At the time the chair was also seeking two administrative periods and the Budget and Review Committee only approved one. Ms. White testified that neither Mr. Van Kampen nor Mr. Hathaway told the committee members how to vote and had no influence on their decision. During the discussions Mr. Miezajski asked whether the person who had been teaching the discontinued courses would be re-assigned to other classes in his department.

A similar process took place with respect to the Department of Liberal Arts. The recommendation of the chair was reviewed by the Budget and Review Committee and the Curriculum Committee. Mr. Dagenais asked the same questions with respect to the classes that were to be eliminated, even though many of the members of the Curriculum Committee and program of Budget and Review Committee were the same. Mr. Dagenais asked at that meeting whether the Complainant was going to be reassigned to teach other courses. He was told that her courses were being discontinued because of low enrolment. Mr. Dagenais and Ms. White voted against the recommendation. Ultimately the recommendations for Fine Arts were approved, as were those for the C& D and Liberal Arts. Ms. White explained that on the Budget and Review Committee there was one student from each department and on the Curriculum Committee there were two students from each department.

The Governing Council contained three members of the student body, six members of Faculty and nine appointees by the Lieutenant Governor. The nineteenth member was the President of the College. At a meeting on March 16, 1986, the recommendations of the Communication and Design, Liberal Arts and Fine Arts Departments were presented. There was considerable discussion and Mr. Tiley questioned the recommendation not to offer the Complainant's courses for the following year. He also asked whether the Complainant would be offered employment elsewhere in the College. Ms. White again voted against the cuts to Fine Arts. Mr. Miezajs made one last attempt to argue for the retention of those courses, to no avail. Ms. White stated that neither Mr. Van Kampen nor Mr. Hathaway told any members how to vote before the Council.

Ms. White testified that during the 1986-87 year she was on the Executive Committee of the Faculty Association. That involved ratifying decisions made by the President, Vice President, Treasurer and Secretary, attending all meetings and acting on behalf of the membership. She knew Mr. Dagenais very well as a result. She described him as an exemplary president. She stated that he negotiated the first Collective Agreement with entrenched job security, the DAC process and grievance procedure. She described him as someone who was prepared to openly defy management in order to accomplish his goals and was often in open conflict with management. She described him as a champion of faculty rights. She was aware that Mr. Dagenais spearheaded the effort to support the Complainant in her grievance and persuaded the College to implement the provisions of a Memorandum of Agreement with respect to the assessment committees. He made himself available to the Complainant regularly and worked with the Association's lawyers to provide financial and legal support.

Mr. Archie Graham succeeded Mr. Dagenais as the Faculty Association's President. She described him as an incredible defender of faculty rights and not the type of President who would simply "go along" with management. Indeed he had a reputation for not getting along with management. Mr. Graham made sure that every article and condition of the Memorandum was upheld with respect to the Complainant's rights. He spent considerable time with the Complainant and assisted her at every stage of the process.

Because of her involvement on the committees and the Faculty Association, she knew that the Complainant had been evaluated in 1987 and again in 1988 with respect to alternate courses, although she did not participate in the earlier evaluations. In 1988 she was a member of the DAC for Foundation Studies. Mr. Claude Givman was the chair of Industrial Design and acted as chair of the DAC in this case. There were two other members of the Committee, one of whom was a student. Ms. White testified that before the 1988 evaluations she did not speak to either Mr. Van Kampen or Mr. Hathaway and was never told by them how to proceed. According to Ms. White the committee received a binder just prior to the DAC meeting with an accompanying letter. The binder contained the curriculum vitae of the Complainant as well as excerpts from catalogues or calendars of the College which indicated the courses she had taught. The committee did not have time to review the binder thoroughly but, subsequent to the meeting and before the committee met to discuss the Complainant's qualifications, Ms. White reviewed them meticulously. During the evaluation the Complainant was allowed to present her material in her own way and no time limits were placed on her for that presentation. The presentation consisted of slides, books, fabrics, pieces of artwork and an oral presentation from the Complainant. In order to evaluate the Complainant Ms. White testified that the committee had to know the content of the courses she was applying for in order to evaluate her ability to teach those courses. Ms. White denied that they laughed or talked during the presentation and said it would have been highly inappropriate for them to have done so. In her view they were evaluating a colleague of sixteen years and they took the matter very seriously. Ms. White testified that they gave her all the time and attention that someone in her position would deserve and expect. In Ms. White's experience, more time was spent on the Complainant's evaluation than any since then. The Complainant had a full opportunity to represent herself.

The DAC met a week later and engaged in elaborate discussions based on a thorough review of the material in the binder. They discussed the courses she had taught in the past and the descriptions of

them, they discussed her curriculum vitae, the content and quality of the visual materials that they had been presented with and the course content of those courses that she claimed she could teach. Having discussed all of those issues they arrived at a unanimous decision that they could not offer the Complainant a course in their program. Eventually Mr. Givman wrote a memo to Mr. Hall-Humpherson outlining their conclusions.

Ms. Nancy Hood worked at the OCA from 1973 to 1975 and again from 1976 to 1987. During that time she was an Administrative Assistant to the President, Executive Assistant to the President and finally, Director, Personnel Services. Her responsibilities included recruitment, wage and salary benefit administration, union/college committees, negotiations, grievances, arbitration and the appointment process for the faculty. As well she was responsible for health and safety issues and for the co-ordination of the colleges models. She reported directly to the President and had daily contact with him. Her office was directly across from the President's office and was separated by a small lobby. She attended compensation meetings, union college meetings and was the resource for the Academic Appointments and Tenure committee. She attended the Program and Budget Review Committee meetings, Curriculum Committee meetings and Council meetings as a spectator, but not as a voting member. She had no authority to either hire, fire or transfer faculty members.

She was involved in the decision to suspend Ms. Burt. Mr. Hathaway had become aware of a number of problems with the way she was performing her duties and had received several serious complaints about her work. He discussed those with Ms. Hood and they in turn discussed them with their legal counsel to determine what course of action they should take. The concerns involved the manner in which she had treated students and other members of the College and raised serious doubts about her ability to continue as chair of the department. The decision to suspend Ms. Burt in December of 1985 was made by the Council on the recommendation of the President. These concerns and the resulting decision occurred before September of 1985. Ms. Hood was not at the meeting where Ms. Burt was advised of her suspension but she was in her office and observed Ms. Burt immediately after the meeting. According to Ms. Hood, Ms. Burt was angry, aggressive, loud and strident and demanded that a member of the Faculty Association, who was in the office at the time, do something about it. Ms. Hood testified that she never saw Mr. Hathaway meet alone with Ms. Burt in the Fall of 1985.

Ms. Hood worked during the summer of 1986, including July and August ,and at no time did she see the Complainant at the College. It would have been unusual for a faculty member to attend at the College during the summer except for the chairs of the departments and staff holding administrative positions.

Ms. Hood stated that the Complainant never complained to her about Mr. Van Kampen, either by herself or in the presence of Mr. Hathaway. The Complainant never mentioned the comment Mr. Van Kampen made concerning her shirt, the lipstick, the sexual experience with brown women, the comment with respect to the "try through the front, you have to try it through the back if you want to get full enjoyment", "she should have a taste of other people" that Mr. Van Kampen put his arms around her or grabbed her or flipped her hair or sent her notes inviting her to a cottage. Ms. Hood also denied that the Complainant ever told her that Mr. Van Kampen was attempting to have a relationship with her and that he had threatened to remove her from her job if she did not cooperate.

Ms. Hood specifically denied telling the Complainant not to tell anyone about these incidents and not to document them. In fact, Ms. Hood testified that she would have advised the Complainant to document every detail including the time, place, witnesses. As well, if the Complainant had spoken to her she would have made notes herself of these incidents.

Ms. Hood also categorically denied having told the Complainant that she could transfer her course out of C&D. She stated that neither she nor Mr. Hathaway could have done that on their own initiative. Ms. Hood stated that the OCA had a process for approving curriculum and the number of teaching periods for each department. The chair of a department could make a recommendation to the President of the College. Those recommendations would proceed through a series of committee levels until they were ultimately approved by the Council. They first advanced to the Program and Budget Review Committee, which would estimate the costing of the proposal. The Curriculum Committee would then approve the number of class periods and the courses to be taught. If Council agreed with those recommendations, it would approve them. After the courses had been approved by the Council, the department heads would make their recommendations about who should teach the courses to the Academic Appointments and Tenure Committee which again was subject to approval by Council. Final approval always rested with Council. Ms. Hood testified that neither the

President nor the chair of a department could force another chair to include specific courses in their program.

Ms. Hood was involved in the preparation of the first policy with respect to sexual harassment. She received complaints about faculty members but never about Mr. Van Kampen. She described him as a conservative businessman, very family oriented, very concerned about the quality and professionalism of the students and a very fine professional man. He was a gentleman in every way.

Ms. Hood testified that she did meet with the Complainant concerning her courses. The Complainant came to see her about her C&D courses and about the fact that originally they had been classified as studio design courses. Over the course of time they developed into a lecture format. The Complainant talked to Ms. Hood about changing the compensation for those courses to what she referred to as "two for one" which meant that one lecture seminar course would be compensated as two studio courses. The "two for one" policy applied particularly to those teachers who were teaching art history and lecture courses in Liberal Arts. The Complainant, however, never asked that her courses be transferred to Liberal Arts and all discussion concerned changing the compensation of those courses, not moving them.

Ms. Hood was shown the letter from Mr. Van Kampen to the Complainant dated November 4, 1986, as well as the Complainant's response to that memo dated November 21, 1986. Ms. Hood had not seen those letters and denied helping the Complainant draft her reply. She was also shown a memo dated December 5, 1986, from Mr. Van Kampen to the Complainant as well as the December 15th response to that memo by the Complainant. Ms. Hood had not seen those letters and denied assisting the Complainant in drafting a response.

Ms. Hood became aware of the fact that the chairs of three of the Complainant's departments were not recommending that her courses be offered in the following academic year because she saw the letters to that effect. She was not aware of their decisions until she saw those letters.

Ms. Hood attended the Program and Budget Review Committee meeting where the curriculum projections were discussed and approved. In particular she was in attendance at the meeting where the decision was made not to offer the Complainant's courses for the following year. She drafted the

letter, dated February 25, 1987, to the Complainant on instructions from Mr. Hathaway and in consultation with the OCA's legal counsel. Her evidence is that similar letters were sent to ensure that any faculty member who was unlikely to be reappointed in the following year would have notification of that prior to any public discussion. Final approval of the curriculum was still pending from the Council. If Council had not approved the recommendations, the Complainant would have been reappointed. Ms. Hood testified that they had a number of cases each year where staff would be notified that there were no teaching assignments for the following year and subsequently advised that a teaching position had become available.

Ms. Hood denied the suggestion that there was a conspiracy to rid the College of the Complainant. When she was asked whether it was likely that Mr. Dagenais was party to a conspiracy to remove the Complainant from the curriculum, she stated "absolutely not, it is contrary to his personality and to his role." She stated his role was to make sure people were treated properly by the College and that he took his duties very seriously.

In cross-examination Ms. Hood testified that she was unaware of any procedures to allow for a course to be moved from one department to another. She testified that each department had a finite number of periods to offer and that each chair developed their curriculum with that number of teaching periods in mind. She never saw courses transferred from one department to another.

When she was advised that the Complainant's evidence was that she spoke to her on several occasions concerning her problems with Mr. Van Kampen, Ms. Hood testified that the first time she heard about the accusations against Mr. Van Kampen was when she read the complaint filed with the Human Right's Commission. None of the conversations the Complainant alleges she had involving Ms. Hood took place.

The only discussion she recalled about the Complainant's courses involved changing the compensation of them.

The next witness for the College was Ms. Jeri Vanderburg. Ms. Vanderburg is presently retired but worked for the Ontario College of Art for fifteen years. She was the departmental secretary for C&D during the whole period of time. She was familiar with all aspects of the department including the

students, the faculty, the committee reports and classroom set-ups. She processed information with respect to the curriculum projections and was responsible for transposing them into the proper format.

Ms. Vanderburg worked with Mr. Van Kampen for four years, from 1986 to 1990. When he started in the summer of 1986 she helped him become familiar with the department, in particular the students. They discussed the curriculum, student involvement with the program itself, courses and course content, course titles, faculty teaching, and student/teacher ratio. Before Mr. Van Kampen became chair of the department Ms. Vanderburg said that it was very loosely managed. For several years before he took over the department, it was well known in the industry that C&D graduates were falling short of expectations. In the past, companies would hire C&D graduates over other graduates because of the reputation of the department. That was no longer the case. Mr. Van Kampen, as a professional, was aware of the declining reputation of the C&D department and immediately began working on the program to try to produce a good balance of design and illustration advertising. Many classes were over enrolled while some had traditionally low enrolment. Some classes had 40-60 students while others had 7-10. His program was designed to redress that imbalance. By the end of the summer of 1986 he had a proposed program in mind.

Ms. Vanderburg prepared a memo dated October 3, 1986, addressed to all faculty members in the department concerning his review of the courses. The plan was ultimately presented at a faculty meeting on October 18, 1986. Ms. Vanderburg attended that meeting and took minutes of the meeting. Ms. Vanderburg testified that in general the reaction of the faculty was very positive to the changes even it did not include the courses taught by the Complainant. She typed the memo dated October 20, 1986, wherein Mr. Van Kampen asked for input. In that memo he proposed the formation of two committees, design and illustration, and those committees were ultimately established as well as a third committee dealing with advertising. Mr. Van Kampen received several responses from faculty members as a result. Ultimately he did receive input from the Complainant, although not during the initial discussions.

Ms. Vanderburg recalls two meetings wherein the Complainant and Mr. Van Kampen discussed her courses. Ms. Vanderburg testified that the Complainant did not meet on any regular basis with Mr. Van Kampen and, in fact, it would have been difficult to do so because he was a very "scheduled

man" who attended numerous meetings as well as carrying a teaching assignment. Ms. Vanderburg testified that she always set up his meetings with the faculty.

The first meeting Ms. Vanderburg recalled was October 9, 1986. The Complainant had asked her several times to set up a meeting but could never give her an appropriate date. Eventually she did and the meeting took place in Mr. Van Kampen's office. At the Complainant's request, Ms. Vanderburg joined the meeting at the beginning and assumed she was being asked to attend in order to be a witness for the Complainant. At that meeting they discussed the curriculum generally and the reasons her courses were going to be discontinued. Ms. Vanderburg did not stay for the full meeting but returned to her desk to answer the telephone. Mr. Van Kampen's office was set in a large room divided by a glass wall. The glass did not completely close off his office. Ms. Vanderburg could hear generally what was going on in the meeting. She saw the Complainant leave the meeting and at no time did she hear Mr. Van Kampen shouting, waving papers or pounding the desk. When the Complainant left the meeting, she appeared to be fine.

The second meeting took place in January and while Ms. Vanderburg did not attend the meeting she stated it was just a general conversation about the courses and a specific discussions as to why the Complainant's courses were not being offered. Some of the discussion concerned the fact that the Complainant's courses were under enrolled. It was after that January meeting the Complainant was advised by memo that Mr. Van Kampen did not intend to recommend that her courses be approved throughout the following year.

Ms. Vanderburg described her relationship with the Complainant as friendly. They ate lunch together on occasion and, on a few occasions, Ms. Vanderburg attended at her dance recitals. The Complainant never told Ms. Vanderburg that Mr. Van Kampen was sexually harassing her, nor did she ever tell Ms. Vanderburg that her classes were going to be transferred out of the department. Ms. Vanderburg specifically denied that the Complainant ever told her about any of the specific incidents involving Mr. Van Kampen and his alleged harassment of her. The only incident she was aware of was the one referring to the blouse because she was there at the time. Mr. Van Kampen, she and two teachers were standing in front of the classrooms on the second floor one morning when the Complainant walked towards them and said hello. They chatted and Mr. Van Kampen said "that's a very pretty blouse you have on; it's a pretty colour." The Complainant seemed flattered and stayed

for a few more minutes to chat. Then everyone dispersed for the various classrooms. Ms. Vanderburg never heard Mr. Van Kampen comment about what the Complainant would look like without the blouse. Ms. Vanderburg never saw Mr. Van Kampen touch the Complainant, never heard him say anything of a sexual nature to her or anyone else. Ms. Vanderburg said that she worked very closely with Mr. Van Kampen and enjoyed working with him. She described him as a methodical, business-like, polite, well mannered man. She also said he was very focused and knew what he wanted.

In cross-examination, it was suggested to Ms. Vanderburg that if Mr. Van Kampen said more concerning the blouse, she did not hear it. Her answer was that if he had said more she would have heard it because she was with Mr. Van Kampen until the Complainant left for class.

Ms. Vanderburg was unaware of any of the Complainant's problems and only knew about the allegations when she read the complaint.

Mr. Norman Hathaway is the other named Respondent. He graduated from the College in 1949 from the Advertising Art department now known as C&D. From then until September of 1983, when he became President of the College, he worked at several well known companies, including Canada's largest printing and lithograph company, a large film and engraving company, Canada's largest film and television producer and a well-known industrial and packaging design house. He was President of the College for four years, from 1983 to 1987. During that time he was responsible for the implementation and involvement of many new committees and programs. He was one of the founders of the "Friends of the College" which was comprised of people interested in the art world who would monitor the programs of the College and act as primary fundraisers. He was also responsible for the establishment of an effective health and safety committee, the hiring of a health and safety officer, the implementation of a sexual harassment policy, the revision of the student appeals process, the establishment of a task force on the status of women, the approval of funding for an employment equity officer, the development of a public relations office, an educational cultural exchange with Sichuan Institute of Fine Arts in Chongqing, a successful government lobby for additional funding of \$600,000.00 yearly, and founded the OCA 2000, which was a weekend retreat donated by one of the major hotels to allow a site for discussions of the future direction of the college. Mr. Hathaway was a key figure in the unification of the four Colleges of Art in the country, namely, Halifax School

of Design, the Nova Scotia School of Art, the Emily Carr in Vancouver and the Ontario College of Art.

He described the College as a unicameral system unique to the College and the University of Toronto. It is a fail-safe system designed after the Ascott years to ensure that, in the future, no one person could unilaterally make sweeping changes unchecked. Decisions are filtered through several committee levels that ultimately must be approved by the Governing Council. As President, he worked with the chairs of the various departments or the administrative staff to implement the policies of the College.

In December of 1984, he was approached by the President of the Alumnae Association who was upset about the way his daughter, a student in the Design department, had been treated by Ms. Burt. According to him, his daughter had been given many incompletes in her courses and was therefore required to take summer courses. As well, she had been treated in an unfriendly manner by Ms. Burt and claimed her work had not been evaluated fairly by her. Because the allegations were serious, Mr. Hathaway decided to conduct a thorough investigation. He worked closely with the Registrar, Mr. Begley, and the Faculty Association President, Mr. Deganis, over several months in 1985 and, as a result of those investigations, determined that Ms. Burt should be suspended and ultimately terminated. On the advice of legal counsel, he invited Ms. Burt to a meeting on December 20, 1985, to advise her of their decision to suspend her pending further investigation. While she was at that meeting he arranged to have all of the files from her department removed so that she would not have access to any of the College's material after her suspension. When Ms. Burt was given the letter of suspension she was shocked and angry.

Subsequent to that meeting, in January of 1986, the Council passed a motion that a task force be set up to conduct further investigation into the allegations. That task force produced a lengthy report setting out numerous allegations of misconduct against Ms. Burt. Following that investigation, Ms. Burt was terminated.

Mr. Hathaway testified that he did not meet alone with Ms. Burt in the Fall of 1985. At that time he was investigating allegations against her and to the extent possible, he avoided her. He denied telling Ms. Burt or anyone else that he wanted to get rid of Ms. Khalil or the courses she taught. In fact,

he attended at least two of the Complainant's recitals and, on one occasion went out to dinner with the Complainant and her spouse. He denied he was prejudiced against the Complainant because she was East Indian. He denied any personal relationship with Mr. Van Kampen and described him as a competitor. He also denied ever being told by the Complainant that Mr. Van Kampen was bothering her. She never told him about any of the incidents described in her complaint or in her evidence at the hearing.

He attended the October 18, 1986, meeting with the C&D department. Two or three days later the Complainant approached Mr. Hathaway to request that her courses be mandatory and that she be classified as a full-time instructor in C&D. He told her that he did not have the authority to make those changes. He was aware of the recommendations of the chairs regarding the discontinuation of the Complainant's courses but denied having any input into those recommendations. He was present at the meetings of the Program and Budget Review committee, the Curriculum committee and the Council when the curriculums for 1987/88 were approved. He denied telling anyone on those committees how to vote.

He and Mr. Hall-Humpherson met with the Complainant twice in February of 1987, to discuss her future. The first meeting occurred on February 19, 1987, the second on February 24, 1987. At that meeting the Complainant told Mr. Hathaway she had received letters from the chairs of the departments she taught in advising her that all six of her courses were being deleted from the next year's curriculum. She told him that she believed that they had been pressured into making those recommendations. She suggested that she be given the opportunity to be acting chair of the General Studies department while the chair was at the Florence campus for the year. She also asked for a guarantee of full time employment. It was at this meeting that she first raised with Mr. Hathaway the question of moving her courses to another department, Mr. Hathaway, on the other hand, wanted to discuss the peer assessments and the severance package. Mr. Hathaway denied telling the Complainant to sit down and say nothing. He denied telling her that no one at the College wanted her and that if she did not sign the resignation letter, he would make the peer assessment process a nightmare for her. He did not get angry and pound the desk. Neither he nor Mr. Hall-Humpherson told the Complainant not to discuss the severance offer with anyone.

Subsequently, she was assessed twice by the peer assessment committees, once in 1987 and again in 1988. Mr. Hathaway had left the College by the time of the second series of assessments. He denied having any influence on the assessment committees.

ARGUMENT

Commission counsel took the position that findings in this case depend on the facts, some of which are not in dispute. For example, the Complainant taught at the College for a number of years without criticism or complaint from the students or the faculty. In July of 1986, Mr. Van Kampen took over the C&D department. Eight months later the President of the College was seeking the Complainant's resignation. It was his submission that the facts, the inferences to be drawn from those facts and the circumstantial evidence lead to the conclusion that the Complainant's allegations are true. Mr. Hathaway told Ms. Burt in 1985 that he wanted to get rid of the Complainant and the courses she taught. When Mr. Van Kampen took over the C&D department in 1986, he saw his chance. Mr. Van Kampen reviewed the department's curriculum and determined, before he even met the Complainant, that her courses did not fit into his future plans for the department. In his mind she was disposable and therefore powerless. That is a classic component of sexual harassment, a power imbalance. This Board should accept the evidence of the Complainant about the course of sexual harassment she endured during the Fall of 1986 and the Spring of 1987. Mr. Lafreniere corroborated her evidence. He was a witness to some of the incidents of harassment cited by the Complainant.

Mr. Hathaway was aware of this course of harassment. The Complainant told him several times about various incidents and asked for his assistance. He acted in a predictable manner. He decided the best solution was to move the victim away from the troublemaker. That is where the idea of moving her courses originated. Mr. Hathaway insisted that he alone did not have that power and that there was a process in place to ensure no one person could act without the consent of various levels within the College's structure. However, one person could initiate the process. Mr. Hathaway himself proposed a motion at the December 23, 1986, Council meeting that three courses taught in the C&D department be transferred to the department of Liberal Arts Studies. That explains why, during the C&D departmental meeting, there was no reaction to the fact that the Complainant's courses were omitted from the next year's curriculum. One would have expected the Complainant to question the omission of her courses. She felt secure because she believed that her courses were

going to be transferred to another department. Mr. Van Kampen and Mr. Hathaway worked together in the plan to move the Complainant to another department. That is the reason for the memo to the Complainant from Mr. Van Kampen advising her that Liberal Arts was prepared to introduce academic courses recommended by C&D. It is clear that moving the Complainant's courses was Mr. Hathaway's preferred method of dealing with the problem throughout the Fall of 1986.

In 1987, he was presented with an alternative opportunity. Financial problems at the College gave him the perfect excuse for eliminating her from the curriculum entirely. An academic task force was set up to investigate methods of saving and, on February 2, 1987, identified specific period reductions. Mr. Begley testified that it was anticipated there would be meetings with the department heads over the period of a week or two. In fact, within forty hours of the Council meeting, Mr. Hathaway made a decision not to renew the three courses taught by the Complainant. Indeed, three chairs of three different departments sent identical memos, dated February 4, 1987, to Mr. Hathaway stating "It is not my intention to recommend that the courses ...currently taught by Khaletun Majumber be offered in 1987/88". These memos were not copied to Mr. Begley, Mr. Hall-Humpherson, the academic task force or the Curriculum Committee. They were not processed through the checks and balances. The only possible conclusion is that this exercise was orchestrated by Mr. Hathaway.

There followed meetings in February of 1987 in which the Complainant was advised that the courses taught by her were not going to be included in the 1988 curriculum. However, that decision was not approved by the Curriculum committee until March 5, 1987, or by the Council until March 16, 1987. Mr. Hathaway could make that announcement when he did because he knew the approval of those administrative bodies was merely a formality.

The severance offer is also suspicious on two grounds. In times of severe financial constraints it is hard to explain why the College would make such a generous offer when all they had to do was let her courses expire. She had no contract of employment for the future. The College had no obligation to continue to employ her and the fact that it was prepared to offer her a generous severance package leads to the obvious conclusion that the College, or at least Mr. Hathaway, were determined to force the Complainant out. As well, even though it made a token gesture of good faith by offering her an

opportunity to undergo peer assessments, it made the offer as unattractive as possible to persuade the Complainant to sign a release.

A review of the discussions at the Curriculum committee and the Council reinforces the Complainant's view that the College was never sincere about the offer of peer assessments. In March of 1987, when questions were raised at those two meetings about whether the Complainant would be offered other courses, the answer was "No". If they were sincere, one would have expected the answer would be that the College would not know until after the assessments. It is clear that the assessments done in 1987 and 1988 were tainted. The members of the DAC's knew the answer the College was expecting and voted accordingly.

Commission counsel asked the Board to find that the Complainant's courses were discontinued because Mr. Hathaway wanted to get rid of her and the eastern subject matter she taught and because she refused to accede to Mr. Van Kampen's sexual advances.

Respondents' counsel agreed that this case depended on findings of fact based on the evidence but asserted that the facts clearly show that there is no basis for the Complainant's allegations. There are two diametrically opposed views of the facts and that raises the issue of who is more credible. The Complainant's evidence, contended counsel, was unreliable, uncorroborated, inconsistent and, in the final analysis, does not make sense.

The Complainant was not terminated. Her contract was not renewed because her courses were discontinued and she was not asked to teach any other courses. The College was facing financial cutbacks and several courses formerly offered were discontinued. The Complainant was not the only one affected. She has tried to portray these developments as a personal attack on her rather than a legitimate business decision based on professional and financial considerations.

She has also alleged that, in carrying out this personal attack, Mr. Hathaway and Mr. Van Kampen enlisted the cooperation of literally hundreds of people. She ignores the actual facts which are that the decision to discontinue her courses went through a lengthy process designed to ensure that no one person could exercise that much power within the College. She ignores the fact that, at a time when the other classes in C&D were over-enrolled, hers were seriously under-enrolled. She ignores

the fact that her courses were anomalous to the purpose of the department. Her classes were in the form of lectures whereas the other C&D classes were studio. Her classes were elective, not core courses. She ignores the fact that most of the students in her classes were not C&D students. Finally, she ignores the fact that she was assessed by her own peers and found to be lacking the necessary qualifications to teach other courses.

The facts have shown that immediately upon being appointed chair of the C&D department and before he even met the Complainant, Mr. Van Kampen decided to revamp the department to make it more relevant to the career expectations of the students. He worked with Ms. Vanderburgh and Mr. Begley in formulating a revised curriculum for the next academic year. He circulated that proposal and invited discussion on it. He not only set out his proposed curriculum, he also gave his rationale for it and openly invited input for the changes. He received several written memos applauding his changes and, in some cases, offering additional suggestions. In none of those memos was there a question or criticism of his deletion of the Complainant's courses from the curriculum. Following the circulation of that memo, he met with the Complainant, at her request, to discuss the fact her courses were not included in his proposed curriculum. She contends that Ms. Vanderburgh joined the meeting half-way through. Mr. Van Kampen and Ms. Vanderburgh testified that she was there at the beginning. In any event, contrary to the Complainant's evidence, it was their evidence that at no time did Mr. Van Kampen raise his voice, pound the desk or threaten the Complainant. In the meantime, the changes to the curriculum were openly discussed within the department, committees were set up, and the internal processes were initiated. Those are not the actions of a person or people involved in a conspiracy.

Neither is Mr. Van Kampen's invitation to the Complainant to propose alternative courses consistent with his plans for the future. The Complainant, however, proposed courses similar to the ones she had been teaching, that is lecture elective courses.

The Complainant contended that promises were made to her that her courses would be transferred to Liberal Arts. What Mr. Van Kampen did say was that lecture courses were more appropriately taught in the Liberal Arts department. She interpreted that as a promise but Mr. Van Kampen did not have the authority to transfer those classes without the consent of the department.

Mr. Van Kampen's proposed curriculum was processed through the various committee levels and ultimately approved by the Council. It received unanimous approval from the department and the committees. Mr. Van Kampen did not tell people how to vote. It was his proposal but he did not influence the discussion or the voting on those proposals.

A similar process occurred in the Liberal Arts department. Mr. Nagel determined that the studio classes in his department did not belong and proposed that the Complainant's and Mr. Lawfor's classes be discontinued. Originally he targetted Mr. Lawfor's class for elimination but later, when the actual budget cuts were announced, included the Complainant's. His proposals were discussed within the department and, after receiving consensus there, were processed through the other levels of committees for approval. The open discussion and ultimate consensus are inconsistent with the Complainant's allegations of a conspiracy.

In Fine Arts, there is the uncontradicted evidence of Michelle White that the curriculum committee of the department unanimously approved the memo to Mr. Hathaway and the letter to the Complainant advising that her classes were not included in the next years curriculum. It was Ms. White's evidence that she exercised her own independent thinking in approving the 1988 curriculum, that no one told her how to vote and that there was no mention of Mr. Van Kampen or Mr. Hathaway during that process.

All of the witnesses for the Respondents testified that they were not merely rubber stamps for the wishes of others. No one told them how to vote on any issues. Even the Complainant agreed that, when she was a member of the Council, she exercised independent thinking and that to do otherwise would have been improper.

It is clear from the evidence that the decision not to offer the Complainant's courses for 1988 was made openly, after much discussion within and without the department, and was made for valid business reasons. Commission counsel has suggested that there is some sinister motive for the fact that, in March of 1988 and before the projections had been finally approved by the Council, the faculty were told that the Complainant would not be offered any other courses at the College. The evidence was that was the usual practice. The College made every effort to afford instructors as much notice as possible of the possibility their contracts would not be renewed. Occasionally, in the

interval, a course would become available or the Council would not approve the elimination of the course and the instructor would be asked to stay on.

Commission's suggestion that the offer of severance was suspect does not make sense. It was offered to her because she had been a teacher at the College for seventeen years. It was made to her out of courtesy and in recognition of her long service.

The Complainant alleges that Mr. Dagenais, as President of the Faculty Association, colluded with the College in its attempts to remove her from the faculty. Throughout this period, the Complainant had the full assistance of the Faculty Association. They gave her legal advice throughout the process, including the assessment committees. It persuaded the College to implement the peer assessment process even though the College was not legally bound to do so. When the Complainant elected to go through the assessment process, she had the assistance of Ms. Lace, legal counsel provided by the Association. When she objected to the results of the assessment committees, the Association assisted her with her grievance. It was agreed to adjourn that arbitration hearing so that the Complainant could be re-evaluated by the DAC's. Ultimately, the Association assisted her with her grievance before Mr. Teplitsy, who ultimately dismissed her grievance. The evidence has been consistent and uncontradicted. Mr. Dagenais was an excellent Association president who fought hard for his members and was not a puppet for the administration of the College.

The Complainant has testified she only went through one set of DAC assessments in 1988. And yet there is evidence before you that she underwent a series of assessments in 1987, all with the same result. There are reports from Liberal Arts Studies, Design, Foundation Studies, and Experimental Arts. They afforded her every opportunity to prove she was qualified to teach the courses she had selected. The DAC's reviewed her material, considered her education and experience. In all cases, the Complainant was found to be deficient in the necessary qualifications. There were dozens of people involved in those assessments, including student representatives. To suggest that they were all part of a conspiracy is ludicrous. There was no reason for them to have conspired to have the Complainant removed from the College.

In fact, the evidence is to the contrary. All of the witnesses for the College stated that they arrived at their decisions independently and without coercion. Their evidence should be preferred over that

of the Complainant's. Their demeanor was impeccable, their evidence was not studied but flowed naturally, they answered all questions honestly and sincerely. Their evidence was corroborated by the documentary evidence. In contrast, the Complainant was unsure or unclear about details. She did not answer questions directly but rambled on and on about unrelated matters. In cross-examination she avoided answering direct questions and engaged in arguments numerous times about those questions. Her story changed, both from the original complaint and from her previous evidence. At the hearing she raised new complaint's and, for the first time, claimed to have had discussions with several people about those complainants.

As well, her complaint does not make sense. According to her conspiracy theory, Mr. Hathaway had wanted to get rid of her before 1985. He waited however, until Mr. Van Kampen appeared on the scene to put his plan into action. And, in order to implement his plan, he persuaded her colleagues, the student representatives, the Faculty Association, the government appointees and the administrative staff at the College to assist him. In order for her theory to work, she had to claim all of these people were involved, including, presumably, Mr. Teplitsy. The evidence does not support the allegation that there was a conspiracy.

The Complainant has also alleged that she was the victim of sexual harassment and the decision not to renew her contract was a reprisal for her rejection of those advances. Again, the evidence contradicts her allegations. She claims that Mr. Van Kampen made certain comments to her of a sexual nature and that, in some instances, there were other faculty or students members present at the time. None of those people were called as witnesses to corroborated her claims. During her evidence-in-chief, and more particularly in cross-examination, she changed her version of the events giving rise to the complaint. She had to change the facts in order to sustain her claim that Mr. Van Kampen's harassment of her started in the summer of 1986. Otherwise, the timing of his memos regarding changes to the D&C department are out of step with her claims of reprisal. Mr. Van Kampen categorically denied making any of those alleged statements and Ms. Hood and Ms. Vanderburgh denied having had any discussions with the Complainant about those alleged statements, in direct contradiction to the evidence of the Complainant. Commission counsel contended that the classic elements of sexual harassment exist in this case but neglected to add that most often, the sexual advances or comments are made covertly. In this case, Mr. Van Kampen allegedly committed

these acts in front of witnesses. Those are not the acts of a person using his position of power to intimidate or threaten a subordinate into submission.

DECISION ON THE MERITS OF THE COMPLAINT

The Complainant has alleged that her right to a workplace free from harassment and discrimination has been infringed by the Ontario College of Art, Mr. Norman Hathaway and Mr. Jan Van Kampen. Specifically, she has alleged that she was the victim of a course of sexual harassment by Mr. Van Kampen commencing in the summer of 1986 and ending in her termination from the College. That termination was a direct reprisal for her rejection of Mr. Van Kampen's sexual advances. Mr. Hathaway colluded with Mr. Van Kampen to remove her courses from the curriculum because he objected to the East Indian content of her courses and her East Indian heritage.

It is often the case when allegations of sexual harassment in the workplace are examined, the only witnesses to the actual comments or actions complained of are the harasser and the victim. While that is true of some of the allegations in this case, others were reportedly made in the presence of others, some of whom testified at the hearing. The allegations of discrimination on the basis of race and/or origin can, to a larger extent, be examined against the documentary evidence produced by the parties. Ultimately, the merit of the allegations must be determined by weighing the testimony of the witnesses against the objective evidence, if any, and by deciding whose version is most in harmony with the circumstances that occurred at the time of the complaint. That requires a finding as to the credibility of the witnesses.

The Complainant has alleged that Mr. Van Kampen made sexual advances to her and that her rejection of those advances resulted in her dismissal. Mr. Van Kampen categorically denies each and every allegation.

In my view, the Complainant's evidence about these allegations was generally unreliable and inconsistent. She was vague about details and in many instances could not or would not recall the dates, times, places or people involved in her complaint. For example, in the complaint, she stated that she had been teaching at the College since 1970. She was shown a letter of hire to her from Mr. Ascott with her signature at the bottom stating that she was hired for the 1971/72 academic year.

She had no recollection of the letter. She allowed that the signature might be hers but stated that her signature had changed over the years and she could not be sure. She was shown a handwritten resume from her personnel file in which she claimed to have a master's degree in sociology. In fact she was several courses short of a degree. She denied that the resume was written by her, claiming again that her handwriting had changed over the years and that she could not say with certainty that the document was written by her.

In the original complaint, the Complainant stated she first met Mr. Van Kampen in July of 1986. In cross-examination she was less certain of the timing of that first meeting but maintained it was during the summer. Mr. Van Kampen, Ms. Vanderburgh, Mr. Begley, Ms. Hood and Ms. White all testified that the Complainant was not at the College during the summer of 1986. Their evidence was that it would be unusual for a faculty member to be at the College during the summer months and that they would have noticed the Complainant had she been there. As will be seen later, whenever the Complainant was faced with evidence that contradicted her version of the events, she claimed to suffer from a poor memory. On other occasions, she was adamant that her memory was absolutely clear.

At times, she elaborated on the details in the original complaint and/or added details never before raised in the complaint or during the discovery process. The first example arose early in her evidence-in-chief when she stated that Mr. Van Kampen "hold me from the back" in front of several students after a meeting. Respondents' counsel objected to that fact that this allegation was being raised for the first time. Shortly thereafter the Complainant testified that Mr. Van Kampen would come into her classroom and ask to speak to her in the middle of her lectures. Respondents' counsel objected to this evidence on the same grounds. Commission counsel conceded that it was the first time he had heard these allegations. It was agreed that, if any additional new allegations were raised during the Complainant's evidence, Respondent's objection would be noted for the record and that, if necessary, she would be granted an adjournment to investigate those additional complaints at the conclusion of the Complainant's evidence. Following that agreement, the Complainant continued to add details to her original complaint. She claimed to have had conversations with Ms. Hood concerning moving her classes to Liberal Arts and to have been advised by Ms. Hood not to speak to anyone about Mr. Van Kampen, including Mr. Dagenais. She related a conversation with Mr. Meizajs in which he allegedly stated that he decided to discontinue her class because Mr. Hathaway told him it would be

transferred to Liberal Arts. She also raised for the first time a conversation with Mr. Hathaway prior to the February 19, 1987 meeting in which he told her that at the meeting they would be discussing the transfer of her three periods from C&D to Liberal Arts. Many of the details of that meeting were added at the hearing that had not been disclosed previously. When challenged about these additional allegations and details, the Complainant stated that she did not include everything Mr. Van Kampen said to her in her complaint because she was embarrassed and ashamed.

While I appreciate the Complainant was very upset and nervous at the hearing, that alone cannot explain the fact that at no time during the investigation of the complaint or the preparation for the hearing, did these additional allegations arise. As was explained in the decision on the preliminary matter, this complaint has been scrutinized more closely than is usual and one would have expected all pertinent information would have been forthcoming during those proceedings.

Not only is the timing of these additional allegations suspect but the evidence of all of the witnesses involved is in direct conflict with the Complainant's. Ms. Hood denied the allegations that she spoke with the Complainant on several occasions about Mr. Van Kampen. She denied suggesting that the Complainant's courses be transferred out of C&D and testified that no one at the College would have had the authority to do so without the consent of the chairs of the affected departments and the various committees involved in the approval process. She denied advising the Complainant to ignore the sexual harassment and not to discuss Mr. Van Kampen's behaviour with anyone. Indeed, her evidence was that her advice would have been to the contrary. She described Mr. Van Kampen as a gentleman and testified that, as a participant in the processing of sexual harassment complaints, she never received any complaints from students or faculty members about him, including the Complainant. Ms. Hood no longer works at the College and would have no reason to lie about her knowledge and actions while she was employed at the College. She was forthright in her evidence and, in my view, answered questions honestly and directly.

Mr. Van Kampen categorically denied all of the allegations against him and I accept his evidence over that of the Complainant for several reasons. On a personal level, I found his testimony to be direct, sincere and forthright. On a more objective basis, I found his evidence to be more consistent with the documentary evidence and the evidence of all of the witnesses for the Respondents. For the most part, the comments allegedly made or acts allegedly committed by him were made in private.

However, some of them were allegedly made in front of witnesses, only one of whom gave evidence at the hearing. Ms. Vanderburgh was with the Complainant and Mr. Van Kampen when the comment concerning the blouse was made. She heard Mr. Van Kampen compliment the Complainant on her blouse. She did not hear Mr. Van Kampen question how the Complainant would look without the blouse. Her evidence was that she was with them until the Complainant left to teach her class and that, if such a comment had been made, she would have heard it. As well, the Complainant testified that on some occasions the actions of Mr. Van Kampen were witnessed by students or that she related those actions to students shortly after their occurrence. None of those students were called to support the Complainant's version of the events. Even those advances made in private were reportedly made in public hallways, classrooms and an open concept office where others would be likely to hear or see what was happening. I do not believe that an intentional course of conduct intended to intimidate and coerce a subordinate to submit to sexual pressure would be handled in such an open manner.

Ms. Vanderburgh worked closely with Mr. Van Kampen throughout this time and never saw Mr. Van Kampen act in an untoward manner to the Complainant or anyone else. She described Mr. Van Kampen as a polite, well-mannered, professional man and stated that she enjoyed working with him. Her evidence contradicted that of the Complainant's in every respect. She did not have discussions with the Complainant about Mr. Van Kampen's conduct. She denied the Complainant's claims to have discussed his sexual harassment of her. She attended at the meeting on October 9, 1986, and stated that at no time did Mr. Van Kampen pound the desk or raise his voice. She too no longer works at the College and would have no reason to mislead this Tribunal. Her evidence was clear, her manner was forthright and direct and she answered all questions thoughtfully and thoroughly.

Not only does the evidence of the witnesses support the Respondents' version of the events, but the documentary evidence is equally compelling. Within a month of the 1986/87 school year Mr. Van Kampen had determined that the Complainant's courses did not belong in his department. He came to that conclusion based on several uncontraverted factors. The Complainant's three classes were under-enrolled while the other courses were seriously over-enrolled. Not only were her classes elective rather than core, but as well, they were populated mainly by students from outside departments. Her courses were in lecture format while all others in the department were studio. Her classes did not fulfill the mandate of the department to provide students with business related courses to enhance their career prospects. If I were to accept the Complainant's version of the events, I

would have to believe that, as early as July or August of 1986, Mr. Van Kampen had met the Complainant, determined he wanted to have a sexual relationship with her and decided that, in order to force her to submit, decided to threaten to discontinue her courses by restructuring the entire department. I would also have to accept her contention that he did so knowing he would have to explain his decision to the faculty of the department, the Budget and Program Review committee, the Curriculum committee and the Council. The Complainant argued that the fact that his actions were openly disclosed, discussed and approved can be explained by the fact that some faculty members were afraid for their own jobs and therefore did not challenge his proposals and that others were part of a larger conspiracy to remove her and her subject matter from the College. Not only is that proposition improbable, it is contradicted by the evidence.

She has alleged that the DAC's were all directed how to vote by Mr. Hathaway. He became part of Mr. Van Kampen's conspiracy because he objected to the East Indian content of her classes and her East Indian heritage. She bases her allegations, in part, on a conversation between Mr. Hathaway and Ms. Burt in which he made that confession. I reject Ms. Burt's evidence on this conversation for two reasons. First, I cannot believe that Mr. Hathaway would have made such an incriminating comment to someone who was, at the time, being investigated for improper behaviour. Given the fact that, if the allegations against her were accepted as true, it was likely he would have to take action against her, it is hard to accept that he would make a comment to her that of such a nature. Secondly, she would have us believe that when she was terminated she was neither angry or upset. I reject Ms. Burt's evidence that she was not angry or upset when she was terminated and that she holds no bad feelings towards the College or Mr. Hathaway.

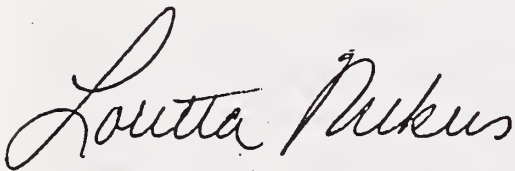
Having rejected her evidence, I do not find any evidence of Mr. Hathaway's participation in a conspiracy to remove the Complainant from the College. He accepted the recommendation of C&D that her courses not be included in the next year's curriculum. There is no evidence that he influenced Mr. Van Kampen or the faculty of the department to make that recommendation. As President, he agreed to allow the Complainant to be assessed by her peers in an effort to be fair. The DAC's had not been formally set up and, in fact, were not legally binding on the College. Nevertheless, the Complainant was allowed to identify courses she was capable of teaching and, if found to be qualified, would have been allowed to bump a junior faculty member. The Complainant testified that members of those DAC's told her that they had been told by Mr. Hathaway how to vote. Those members

classes were discontinued at the same time. Not surprisingly, she believed there must have been a concerted effort by all of the chairs to recommend her courses be discontinued. And, not surprisingly, she attributed the change in attitude to the arrival of the new chair, Mr. Van Kampen. When she was told by Ms. Burt about Mr. Hathaway's comments on the Complainant and her courses, it reinforced her opinion that she was the victim of a conspiracy.

Unfortunately for her, the evidence does not support her theory. The overwhelming evidence is that, even if Mr. Hathaway and Mr. Van Kampen had wanted to remove the Complainant and her courses from the College, which I do not believe they did, there is a process in place that would have made unilateral action on their part very difficult to pursue. The various committee levels at the College were designed to curb the power of any individual to make changes to the curriculum or the faculty without close scrutiny. Even the Complainant herself conceded that, when she was a member of Council, she did not rubber stamp recommendations but exercised independent thinking in approving or rejecting proposals. Ms. White has served on numerous committees within the College and emphatically denied that any committee member would or could be directed how to vote.

For the reasons stated above, this complaint is dismissed.

Dated at Toronto this 15th day of May, 1997:

A handwritten signature in cursive script, reading "Loretta Mikus". The signature is written in dark ink and is positioned above a horizontal line.

Loretta Mikus
Board of Inquiry

every respect. She did not have discussions with the complainant about Mr. Van Kampen's conduct. She denied the complainant's claims to have discussed his sexual harassment of her. She attended at the meeting on October 9, 1986, and stated that at no time did Mr. Van Kampen pound the desk or raise his voice. She too no longer works at the College and would have no reason to mislead this Tribunal. Her evidence was clear, her manner was forthright and direct and she answered all questions thoughtfully and thoroughly.

[232] Not only does the evidence of the witnesses support the respondents' version of the events, but the documentary evidence is equally compelling. Within a month of the 1986-87 school year Mr. Van Kampen had determined that the complainant's courses did not belong in his Department. He came to that conclusion based on several uncontr[o]verted factors. The complainant's three classes were under-enrolled while the other courses were seriously over-enrolled. Not only were her classes elective rather than core, but as well, they were populated mainly by students from outside departments. Her courses were in lecture format while all others in the Department were studio. Her classes did not fulfil the mandate of the Department to provide students with business-related courses to enhance their career prospects. If I were to accept the complainant's version of the events, I would have to believe that, as early as July or August 1986, Mr. Van Kampen had met the complainant, determined he wanted to have a sexual relationship with her and decided that, in order to force her to submit, decided to threaten to discontinue her courses by restructuring the entire Department. I would also have to accept her contention that he did so knowing he would have to explain his decision to the faculty of the Department, the Budget and Program Review Committee, the Curriculum Committee and the Council. The complainant argued that the fact that his actions were openly disclosed, discussed and approved can be explained by the fact that some faculty members were afraid for their own jobs and therefore did not challenge his proposals and that others were part of a larger conspiracy to remove her and her subject matter from the College. Not only is that proposition improbable, it is contradicted by the evidence.

[233] She has alleged that the DACs were all directed how to vote by Mr. Hathaway. He became part of Mr. Van Kampen's conspiracy because he objected to the East Indian content of her classes and her East Indian heritage. She bases her allegations, in part, on a conversation between Mr. Hathaway and Ms. Burt in which he made that confession. I reject Ms. Burt's evidence on this conversation for two reasons. First, I cannot believe that Mr. Hathaway would have made such an incriminating comment to someone who was, at the time, being investigated for improper behaviour. Given the fact that, if the allegations against her were accepted as true, it was likely he would have to take action against her, it is hard to accept that he would make a comment to her that [sic] of such a nature. Secondly, she would have us believe that when she was terminated she was neither angry [n]or upset. I reject Ms. Burt's evidence that she was not angry or upset when she was terminated and that she holds no bad feelings towards the College or Mr. Hathaway.

[234] Having rejected her evidence, I do not find any evidence of Mr. Hathaway's participation in a conspiracy to remove the complainant from the College. He accepted the recommendation of C&D that her courses not be included in the next year's curriculum. There is no evidence that he influenced Mr. Van Kampen or the faculty of the Department to make that recommendation. As president, he agreed to allow the complainant to be assessed by her peers in an effort to be fair. The DACs had not been formally set up and, in fact, were not legally binding on the College. Nevertheless, the complainant was allowed to identify courses she was capable of teaching and, if found to be qualified, would have been allowed to bump a junior faculty member. The complainant testified that members of those DACs told her that they had been told by Mr. Hathaway how to vote. Those members categorically denied making those statements and being influenced in any way by Mr. Hathaway or anyone else. It was their unanimous opinion that the complainant had been fairly assessed. She was afforded the respect due to a long-standing employee and colleague. She was allowed to present her material in her own way and in her own time. The DACs considered her presentation and materials and it was the consensus of all members and all the DACs that she did not possess the necessary qualifications or experience. By this time, the conspiracy would have to include all of the members of the DACs.

[235] This is an appropriate time to consider the witnesses for the respondents. As stated previously, Ms. Hood and Ms. Vanderburg no longer work at the College. There was no suggestion that, while they were there, they were anything but professional and reliable employees. There is no reason to doubt their testimony. Mr. Hathaway, Mr. Van Kampen, Ms. White, Mr. Graham, Mr. Sevier, Mr. Nagel, Mr. Davies and Mr. Begley are all professional artists who are well-known in the community. I cannot believe they would compromise their professional reputations by participating in such a conspiracy and then, under oath, denying their participation at this hearing.

[236] I also reject the complainant's contention that the Faculty Association was a party to this conspiracy. It is clear from the documentation that the Faculty Association supported the complainant at every step. Mr. Dagenais was unfortunately unable to answer to these allegations himself; however, those who knew him testified that he was a champion of the rights of his members and an exemplary President. Corroborating their view are the actions of the Faculty Association throughout this period of time. It was the Faculty Association who persuaded the College to implement the peer assessment committees before they were legally required to. It provided the complainant with legal advice throughout the process. It represented her at arbitration when she was dissatisfied with the results. In the face of those acts, how can it be said it was part of the conspiracy at the College to remove the complainant?

[237] To be fair to the complainant, it is easy to understand her perception that there was some devious plot underway to terminate her employment at the College. She had taught there for a number of years without complaint. As far as she was aware, the students, the faculty and the administration were happy with the way she was teaching her students and

the content of her courses. Suddenly, with the appearance of a new Department Chair, not only the classes in that Department, but all of her classes were discontinued at the same time. Not surprisingly, she believed there must have been a concerted effort by all of the Chairs to recommend her courses be discontinued. And, not surprisingly, she attributed the change in attitude to the arrival of the new Chair, Mr. Van Kampen. When she was told by Ms. Burt about Mr. Hathaway's comments on the complainant and her courses, it reinforced her opinion that she was the victim of a conspiracy.

[238] Unfortunately for her, the evidence does not support her theory. The overwhelming evidence is that, even if Mr. Hathaway and Mr. Van Kampen had wanted to remove the

complainant and her courses from the College, which I do not believe they did, there is a process in place that would have made unilateral action on their part very difficult to pursue. The various committee levels at the College were designed to curb the power of any individual to make changes to the curriculum or the faculty without close scrutiny. Even the complainant herself conceded that, when she was a member of Council, she did not rubber-stamp recommendations but exercised independent thinking in approving or rejecting proposals. Ms. White has served on numerous committees within the College and emphatically denied that any committee member would or could be directed how to vote.

[239] For the reasons stated above, this complaint is dismissed.

C A N A D I A N
C. H. R. R.
HUMAN RIGHTS REPORTER

**BRITISH COLUMBIA
PREGNANCY**

Indexed as: Armstrong v. Crest Realty Ltd.

Volume 31

Decision 11

Paragraphs 1 – 71

Michaela L. Armstrong

Complainant

v.

**Crest Realty Ltd. doing business as Re/Max
Crest Realty**

Respondent

**reasonable causes for discrimination—adverse effect
discrimination—direct discrimination—BURDEN OF
PROOF—elements of a *prima facie* case**

**DAMAGES—compensation for lost maternity benefits—
duty to mitigate—REMEDIES—employment reinstatement**

Date of Complaint:
November 22, 1994

Date of Decision:
December 3, 1996

Before:
British Columbia Council of Human Rights, Douglas
Eastwood

Appearances by:
Michael Blaxland, Counsel for the Complainant
Barry Jackson, Counsel for the Respondent

**PREGNANCY—employment terminated—BONA FIDE
OCCUPATIONAL QUALIFICATION—absence of pregnancy
for receptionist—REASONABLE ACCOMMODATION—duty to
accommodate short of undue hardship—DISCRIMINATION—ability to work and dishonesty as**

Summary: *British Columbia Council of Human Rights finds that Michaela Armstrong was discriminated against by Re/Max Crest Realty when it refused to continue to employ her because she was pregnant.*

Re/Max Crest Realty provides office space and support services to real estate sales agents for a fee. One of the services it provides to its approximately sixty sales agents is the assistance of a receptionist. Re/Max Crest Realty considers the receptionist's position very important to the high functioning of its agents and its office.

In 1994 Jennifer Lawson, the principal receptionist for Re/Max Crest Realty, went on a maternity leave. During her absence, her position was filled by several different individuals on a temporary basis. None of the replacements for Ms. Lawson performed the job in a satisfactory manner in the view of Mr. Lloyd, who was a manager for the respondent.

When Ms. Lawson decided that she was not going to return to

